

4.8.8 Registered Marijuana Facilities (RMF) and Marijuana Cultivation Sites (MCS)

- A. Purpose. The purpose of this Section 4.8.8 is to allow the siting, development and operation of Registered Medical, Recreational and/or Hybrid Marijuana Facilities (RMFs), Marijuana Cultivation Sites (MCSs), and Marijuana Delivery Operators (MDOs) in the Town of Ware in order to:
1. Enable individuals with a debilitating medical condition, for which medical marijuana is a viable treatment, to have access to registered marijuana facilities consistent with state law, the Humanitarian Medical Use of Marijuana Act, G.L. c. 94C, App. 1-1 – Chapter 369 of the Acts of 2012, and the Department of Public Health Regulations, 105 CMR 725, and
 2. To allow for the orderly siting of establishments for the retail sale or delivery of marijuana and marijuana products.
- B. Intent. It is the intent of Section 4.8.8 to protect public health and safety; to regulate the siting, design, and safety of Registered Medical, Recreational and Hybrid Marijuana Facilities (RMFs), Marijuana Cultivation Sites (MCSs), and Marijuana Delivery Operators (MDOs); to minimize adverse impacts on abutting properties; to provide adequate separation from schools, parks, and other areas where children commonly congregate in an organized, ongoing, formal basis; and to provide for site security to deter crime and uphold the safety of surrounding neighborhoods.
- C. Definitions

Hybrid Marijuana Establishment: a business where the combined sale of both medical and recreational marijuana and products containing and/or associated to legalized marijuana use is authorized.

Marijuana Cultivation Site: a business where the cultivation, possession, processing (including development of related products such as food, tinctures, aerosols, oils, or ointments), warehousing, distribution, transferring and transporting of marijuana and products containing marijuana is authorized.

Marijuana Cultivation Structure: a structure that is equipped with climate control systems, such as heating and ventilation capabilities, and that uses a combination of natural and supplemental artificial lighting for marijuana cultivation.

Marijuana Delivery Agreement:

A contract between a licensed Marijuana Establishment and a Delivery Licensee or Marijuana Establishment with a Delivery Endorsement to deliver Marijuana or Marijuana Products from the Marijuana Establishment directly to Consumers and as permitted, Marijuana Couriers to Patients and Caregivers, under the provisions of a Delivery License.

Marijuana Delivery Endorsement:

The authorization granted to Licensees in categories of Marijuana Establishments identified by the Commission to perform deliveries directly from the establishment to Consumers. Delivery items refers to Finished Marijuana Products, Marijuana Accessories, and Marijuana Established Branded Goods.

Marijuana Delivery License:

A Marijuana Courier License or a Marijuana Delivery Operator License.

Marijuana Delivery Licensee:

A Marijuana Courier or a Marijuana Delivery Operator authorized to deliver Marijuana and Marijuana Products directly to Consumers and as permitted, Marijuana Couriers to Patients and Caregivers.

Marijuana Delivery Operator (MDO):

An entity licensed to purchase at Wholesale and Warehouse Finished Marijuana Products acquired from a Marijuana Cultivator, Marijuana Product Manufacturer, and Microbusiness, sell and deliver Finished Marijuana Products, Marijuana Accessories and Marijuana Branded Goods directly to Consumers, but is not authorized to Repackage Marijuana or Marijuana Products or operate a storefront under this license.

Marijuana Microbusiness:

A co-located Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Marijuana Product Manufacturer or both, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

Medical Marijuana Establishment: a business where the possession, sale, distribution, dispensing and administration of medical marijuana and products containing medical marijuana is authorized.

Recreational Marijuana Establishment: a business where the possession, sale, distribution, dispensing and administration of recreational marijuana and products containing and/or associated to recreational marijuana (e.g., aerosols, art, clothing, food, jewelry, literature, oils or ointments, tinctures, etc.) is authorized.

Registered Marijuana Dispensary (RMD): A use operated by an entity registered and approved by the MA Department of Public Health in accordance with 105 CMR 725.000, and pursuant to all other applicable state laws and regulations, also to be known as a Medical Marijuana Treatment Center, that acquires, cultivates, possesses, processes (including development of related products such as food, 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 personal caregivers. A RMD shall explicitly include facilities which cultivate and

process medical marijuana, and which may also dispense and deliver medical marijuana and related products. The cultivation and processing of medical marijuana in accordance with these regulations is considered to be a manufacturing use and is not agriculturally exempt from zoning.

- D. Special Permit and Site Plan Approval Required. Registered Medical, Recreational, and Hybrid Marijuana Facilities, Marijuana Cultivation Sites, and/or Marijuana Delivery Operators require a Special Permit and Site Plan Approval. In addition to the requirements in Article 7 – Administration, Section 7.2, Special Permits, and Section 7.4, Site Plan Review, the provisions of this Section 4.8.8 shall apply to Registered Medical, Recreational, and Hybrid Marijuana Facilities (RMFs), Marijuana Cultivation Sites (MCSs), and Marijuana Delivery Operators (MDOs).

1. Host Community Agreement: Applicants shall submit a proposed Host Community Agreement that describes the measures the Applicant intends to take to mitigate potential negative impacts on the Town and abutting neighborhood from the Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator.

- E. Separation and Setbacks. No Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator may be located closer than three hundred feet (300') (measured from door to door) of a facility used, at the time of the first notice of the public hearing, for a park, playground, pre-school, kindergarten, elementary, middle or high school, state-licensed child day care center, public library, recreation facilities, and other areas where children commonly congregate in an organized, ongoing, formal basis. This measurement shall be the distance between the Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator and the front entrance of the building in question.

Such uses shall not be prohibited from locating within three hundred feet (300') of a Registered Medical, Recreational and Hybrid Marijuana Facility, a Marijuana Cultivation Site, and/or a Marijuana Delivery Operator nor shall a Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator become nonconforming under the Zoning Bylaw if a park, playground, elementary, middle or high school, state-licensed child day care center, or other areas where children commonly congregate in an organized, ongoing, formal basis later locates within three hundred feet (300') of a preexisting Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator.

- F. Security Plan. In addition to the submission requirements for Special Permit and Site Plan Review, the application shall include a Security Plan designed to deter crime and protect the public safety. The Plan may include measures such as locks, gates, cameras, alarms, fences, lighting, and monitoring protocols. The Ware Police Chief, or his/her designee, may recommend changes to the Security Plan and the Town of

Ware Planning Board will incorporate the Chief's recommendations in the Special Permit decision to the fullest extent practicable.

G. Standards Applicable to Registered Medical, Recreational and Hybrid Marijuana Facilities, Marijuana Cultivation Sites, and/or Marijuana Delivery Operators

- a. An applicant shall possess a Certification of Registration from the Massachusetts Cannabis Control Commission as a Registered Marijuana Dispensary, Marijuana Cultivation Site, and/or Marijuana Delivery Operator and shall comply with the Department's regulations at all times.
- b. The siting, development, and operation of Registered Medical, Recreational, and/or Hybrid Marijuana Facilities, and Marijuana Delivery Operators shall be allowed by Special Permit and Site Plan Approval in the Downtown Commercial (DTC), Mill Yard (MY) and Highway Commercial (HC) zoning districts. Marijuana Cultivation Sites are to be allowed by Special Permit and Site Plan Approval in the Rural Residential (RR), Mill Yard (MY), Commercial Industrial (CI) and Industrial (I) zoning districts.
- c. The proposed plan shall conform to §7.2, Special Permits, §7.4, Site Plan Review, and to those zoning districts per §4.2, Use Table, where these uses are allowed.
- d. Use of property as a Marijuana Retailer, Cultivation facility, or Delivery Operator shall be deemed a principal use for purposes of this Zoning Bylaw, and shall be permitted exclusively in accordance with this Article. No Marijuana Establishment may be allowed within Town as an accessory use. Cultivation of marijuana must not take place in a residential unit with an established accessory use, unless the marijuana is for personal consumption in accordance with Massachusetts State law.
- e. Any Marijuana Delivery Operator application for a Special Permit shall include the anticipated number of vehicles operating from the location, number of employees for all operations including fulfillment, administration, and vehicle drivers shall be identified and may be conditioned as such. A copy of the Application of Intent and Management and Operations Profile submitted, to the extent permitted by law, as an integral part of the Special Permit application.
- f. The proposed plan shall provide urban design and landscaping elements to harmonize the proposed project with abutting uses so as to protect and enhance the aesthetics and architectural look and character of the surrounding vicinity.
- g. The use shall not generate outside odors from marijuana use and/or production of marijuana products.
- h. The proposed plan shall refer to §6.5, Signage, for the installation, type, number and size considerations of signs, as applicable.

- i. Hours of operation shall be between 8:00 AM and 8:00 PM Monday thru Sunday.
- j. Noise shall comply with the Noise Policy of the Commonwealth of Massachusetts Department of Environmental Protection and Division of Air Quality regulations, 310 CMR 7.10, and any local noise abatement bylaw. A noise source violates the noise regulation if the source: a.) Increases the broadband sound level by more than 10 dB(A) above ambient, or b.) Produces a "pure tone" condition – when any octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more. These criteria are measured both at the property line of the Registered Medical, Recreational, and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator and at the nearest inhabited dwelling unit. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time, measured during equipment operating hours.
- k. The Town of Ware Planning Board may require a traffic study that includes an analysis of parking demand to justify the number of proposed parking spaces.
- l. A Special Permit granted under this Section 4.8.8 shall be personal to the applicant and shall lapse if the applicant no longer is the holder of the Certification of Registration from the Massachusetts Cannabis Control Commission as a Registered Marijuana Dispensary, Marijuana Cultivation Site, and/or Marijuana Delivery Operator. A change of the registrant shall require submission of a new Special Permit application.
- m. All applicable rules and regulations established under the auspices of the Massachusetts Cannabis Control Commission (CCC) must be adhered to.
- n. All other applicable regulations such as wetland, septic, water supply, etc. are required to be compiled with as appropriate. This permit does not supersede any other requirements.
- o. Applicant for the permit must be the property owner or duly authorized agent.
- p. The property area required to operate a marijuana cultivation structure in the Rural Residential (RR) district will be:
 - i. Minimum of 5 acres: up to 5,000 square feet (Tier 1 per CCC)
 - ii. 10 acres or more: up to 20,000 square feet (Tier 3 per CCC)
- q. Any building utilized for the purposes of marijuana cultivation within the Rural Residential (RR) zoning district shall use architectural and landscape design elements that resemble the typical New England agricultural/farm building styles seen on a farm such as a "butler type metal building" or wood or masonry wall and finished in neutral colors or a color in harmony with existing buildings

on adjacent properties. The Planning Board may, at its discretion, entertain and allow proposals for other building styles.

- r. The rehabilitation of existing buildings for marijuana cultivation in the Rural Residential (RR) zoning district may deviate from the height restriction if they already exceed it, to the extent that any linear addition may continue existing lines, so long as no additional height is added. Additions added non-linear to the primary axis (ridge line) of the existing building shall not exceed 18 feet (eave height).
- s. New buildings and those occupied and used buildings constructed prior to July 1, 2018 under this law which are proposed to be used as marijuana cultivation structures in the Rural Residential (RR) zoning district shall be located at a minimum of one-hundred (100') feet from a Town or State road right of way line.
- t. Existing buildings which are proposed to be used a marijuana cultivation structures in the Rural Residential (RR) zoning district and that are located within two-hundred (200') feet of an existing residential structure on an adjacent property or one-hundred (100') feet of a roadway are required to establish and maintain a year-round dense vegetated barrier of at least ten (10') feet between the residence and/or roadway. A waiver or modification to this provision may be granted by the Planning Board after review for appropriateness and a determination that a modified, reduced or no barrier, would not be substantially detrimental to the adjacent neighborhood.
- u. Hoop houses utilized as marijuana cultivation structures in the Rural Residential (RR) zoning district shall utilize an opaque wall film to preclude direct viewing of the vegetation growth.
- v. Outdoor cultivation may occur in provided that screening, security and other provisions complies with 935 CMR500.
- w. For outdoor cultivation, this bylaw will require that security fencing be screened with natural vegetation or topography. On large properties, it is likely that the cultivator will place the relatively small growing area far from any property boundary so that it is screened from the public by existing vegetation and/or topography. If vegetation is planted to screen the fence, the cultivator will have 3-years for the vegetation to reach maturity and full coverage. It is required that any barbed or razor wire type fencing materials not be used or be entirely hidden from view from public ways or neighboring property. The cultivar must include these security provisions within its special permit application.
- x. Outdoor cultivation must not occur within 3000 feet of a pre-existing hemp farm.
- y. Outdoor cultivation must not store fertilizers, compost, soils, materials, machinery, or equipment within the required front, side, and rear yard setbacks.

- z. A Site Plan review is required as part the Special Permit to assure compliance with parking, waste management, lighting, and all other zoning regulations.
- aa. When a conflict arises between that of a local or state regulations, the more restrictive of these shall be in full force.
- bb. Any change in ownership of the property, operator, duly authorized agent, or co-op association shall require notification to the Planning Board, a review and reissuance of the Special Permit by the Planning Board, prior to the new ownership or other changes taking place.
- cc. The Special Permit shall terminate on dissolution of the co-op, change in ownership, or revocation of the authorization to operate by the Massachusetts Cannabis Control Commission (CCC).
- dd. The Planning Board, Town Planner, and Town Manager shall be notified of any violations, citations or other sanctions by the Massachusetts Cannabis Control Commission (CCC) or other regulatory agency, as related to operations conducted under this Special Permit, by the permit applicant and/or property owner, via mail and certified mail, within three (3) business days from the date of the violation.
- ee. Operations under a Special Permit issued by the Planning Board must comply with all other local, state, or other rules, regulations and requirements.