

8.7. ADULT USE MARIJUANA ESTABLISHMENTS

8.7.1. Purposes

It is recognized that the nature of the substance cultivated, processed, and/or sold by marijuana establishments should be located in such a way as to ensure the health, safety, and general well-being of the public as well as legally authorized adult customers seeking to legally purchase marijuana for their own use. The specific and separate regulation of Marijuana Establishments (hereafter also referred to as an ME) is necessary to advance these purposes and ensure that such facilities are not located within close proximity of minors and do not become concentrated in any one area within the Town of Southbridge.

Subject to the provisions of this Zoning Bylaw, Chapter 40A of the Massachusetts General Laws, Chapter 94G of the Massachusetts General Laws and 935 CMR 500, Marijuana Establishments will be permitted to provide legal cultivation, product manufacturing and retail sale of marijuana for non-medical adult marijuana use in a manner that complies with state regulations.

It is neither the purpose nor intent of this Section of the Bylaw to supersede any federal or state laws governing the sale or distribution of narcotic drugs.

8.7.2. Applicability

This section applies to (Recreational) Adult Use Marijuana Establishments (AUME) to be constructed after the effective date of this section. The commercial cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of Marijuana for Adult and Medical Use is permitted upon application to and the granting of a Special Permit and Site Plan Approval by the Planning Board, acting as the Special Permit Granting Authority, as specified in the Planning Board's rules and regulations.

This bylaw does not apply to the cultivation of industrial hemp as is regulated by the Massachusetts Department of Agricultural Resources pursuant to General Laws, Chapter 128, Sections 116-123.

8.7.3. Requirements for Adult Use Marijuana Establishments

In addition to the standard requirements for uses permitted By-right or requiring a Special Permit or Site Plan Approval, the following shall also apply to all Marijuana Establishments:

A. Application Requirements

The special permit application, public hearing, and decision procedures shall be in accordance with this Section 8.7, the Planning Board's Rules and Regulations, and Section 2.5 of this Bylaw.

In addition to those materials required for Special Permit and Site Plan Approval as listed in the Planning Board's rules and regulations, no Special Permit will be granted by the Planning Board for a Marijuana Establishment unless an application containing the following is submitted:

1. A copy of the Town Council-approved Host Community Agreement.
2. A proposed timeline for achieving operation of the ME and evidence that the applicant will be ready to operate within that proposed timeline.

3. Evidence that the applicant has adequate liability insurance or maintenance of escrow as required in 935 CMR 500.
4. A copy of the detailed written operating procedures as required by the Cannabis Control Commission (hereafter CCC) in 935 CMR 500.105 (or its successor regulation) and as otherwise required by other applicable law or regulation.
5. Locations of all other AUME's in Worcester County.
6. A copy of the policies and procedures for home delivery required by the CCC for the AUME.
7. A copy of the policies and procedures for the transfer, acquisition, or sale of marijuana between the AUME and another or independent testing laboratory as required by the CCC.
8. A copy of proposed waste disposal procedures.
9. A description and list of any waivers granted by the CCC for the AUME.
10. Details of proposed fertilizer, pesticide, water usage, and wastewater plans for any site that will include cultivation.
11. Evidence of the applicant's right to use the proposed site of the marijuana establishment such as a deed, lease or other real estate instrument. Additionally, if a cultivation facility, evidence of contract or agreement to grow marijuana.
12. A detailed floor plan of the premises of the proposed AUME that identifies the square footage available and describes the functional areas of the AUME, including areas for any preparation of marijuana-infused products or open-air cultivation.
13. A description of the security measures, including employee security policies, required by the CCC for the AUME.
14. A conditional letter of approval of the security measures for the AUME, including lighting, fencing, storage, gates, and alarms to ensure the safety of persons and to protect the premises from theft, from the Southbridge Police Department.
15. Detailed site plans that include all of the information required under rules and regulations of the Planning Board, including distances to any of the uses identified in §8.7.3(E) below.

B. Use

1. AUME facilities may only be involved in the uses permitted by its definition and may not include other businesses or services.
2. No smoking, burning, application, or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises, unless expressly permitted under this law and permitted by state law or regulation. The prohibition on on-site consumption shall also include private social clubs or any other establishment which allows for social consumption of marijuana or marijuana products on the premises, regardless of whether the product is sold to consumers on site.
3. Hours of operation for any AUME Retail Establishments shall be established by the Planning Board, but in no event shall said facilities be open to the public between the hours of 9:00 PM and 8:00 AM, including home delivery services.
4. AUME facilities that can demonstrate that they comply with the agricultural exemption under M.G.L. Chapter 40A, Section 3 must still apply for Site Plan Approval.

C. Limit on Retail Establishments

1. Retail establishments shall be limited to four (4).

D. Physical Requirements

1. No AUME shall have drive-thru services.
2. Ventilation. All AUME facilities shall be ventilated in such a manner that no:
 - a. Pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere, and
 - b. Odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the marijuana business or at any adjoining use or property.
3. Exterior signs shall identify only the name of the AUME, but shall not display advertisements for marijuana or any brand name, nor shall marijuana, marijuana-infused products, or associated products be displayed or clearly visible to a person from the exterior of the AUME.
4. For AUME retail establishments, all exterior building openings, entries and windows shall be approved by the Planning Board for purposes of display of goods, signage, etc.

E. Location Requirements

1. No AUME retail building shall be located within five hundred feet (500') of the following, or two hundred fifty feet (250') if located in the Central Core, as measured in a straight line from the building and/or area actively used;
 - a. Public or private pre-school, primary or secondary school [under 935 CMR 500.110(3)], dance or gymnastics school, martial arts school, licensed day care center, or any other facility where children commonly congregate in an organized ongoing formal basis; or
 - b. A public library; or
 - c. A playground, athletic field, or any other recreational areas where children commonly congregate
2. No AUME cultivation/manufacturing/laboratory facility is to be located within:
 - a. One hundred feet (100') of any abutting, occupied residence in a residential zoning district, as measured in a straight line from existing structure to proposed development.
 - b. Two hundred fifty feet (250') of any non-conforming residential structures in non-residential districts, as measured in a straight line from existing structure to proposed development.
3. No AUME retail establishment is to be located within two hundred fifty feet (250') of any Residential Zoning District, residential structure, or any non-conforming residential structures in non-residential districts. Distance shall be measured in a straight line from residential zone boundary line or from existing structure to proposed development. Additionally, no AUME retail establishment shall be located within two hundred fifty feet (250') of any other AUME retail establishment. Distance shall be measured in a straight line from the building and/or area actively used to the building and/or area actively used for any other AUME retail establishment.
4. No marijuana or marijuana-based products shall be sold or grown or cultivated in motels and dormitories, or inside a mobile structure such as a cargo container, motor vehicle or other similar non-permanent enclosure.
5. The distance requirements may be altered at the discretion of the Planning Board through the Special Permit application, reduced only if the applicant demonstrates that the Marijuana Establishment will employ adequate security measures to prevent diversion of marijuana to minors.

F. Reporting Requirements

1. All Special Permit and Site Plan Approval holders for an AUME facility shall provide the Police Department, Fire Department, Department of Inspections Services and the Planning Board with the names, phone numbers and email addresses of all management staff and key-holders, 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 establishment. All such contact information shall be updated as needed to keep it current and accurate.
2. The permit holder shall file a copy of any Incident Report required under 935 CMR 500.110(7) with the Department of Inspections Services, Board of Health, Police Department, Fire Department, and the Planning Board within 24 hours of creation by the AUME. Such reports may be redacted as necessary to comply with any applicable state or federal laws and regulations.
3. The permit holder shall file a copy of any deficiency statement, plan of correction, summary cease and desist order, quarantine order, summary suspension order, order limiting sales, notice of a hearing, or final action issued by CCC or the Division of Administrative Law Appeals, as applicable, regarding the AUME with the Department of Inspection Services, Police Department, and Planning Board within 48 hours of receipt by the AUME.
4. Each AUME permitted under this Zoning Bylaw shall as a condition of its Special Permit file an annual report to the Planning Board and the Town Clerk and provide a copy of all current applicable state licenses and registrations for the AUME and/or its owners, any updated operating policies required under 935 CMR 500.103 by the Cannabis Control Commission, the current insurance policies for the AUME, and demonstrated compliance with the conditions of the Special Permit.
5. The owner or manager is required to respond by phone or email within twenty-four hours of contact by a town official concerning their AUME at the phone number or email address provided to the town as the contact for the business.

8.7.4. Approval/Transfer/Discontinuance of Use

- A. The Special Permit shall remain exclusively with the applicant (who shall also be known as “permit holder” after the granting of the Special Permit), who shall be the owner or lessee of the premises described in the application as the site for the proposed AUME, and shall terminate automatically on the date there is a voluntary or involuntary separation of the applicant’s title or leasehold interest in the premises or the applicant’s right to occupy the premises terminates for any reason.
- B. A Special Permit granted under this Section is non-transferable and shall have a term limited to the duration of the applicant’s ownership or leasing of the premises as an AUME, dependent on the applicant’s continued existence as the same legal entity. Any violation of §8.7.4(E) shall be considered a “transfer” for purposes of this Bylaw.
- C. The special permit shall lapse upon the expiration or termination of the applicant’s registration by CCC.
- D. The permit holder shall notify the Department of Inspection Services and Police Department, and Planning Board in writing within 48 hours of the cessation of operation of the AUME or the expiration or termination of the permit holder’s registration with CCC.
- E. The legal entity and structure of the applicant/permit holder shall not change.

- F. An AUME shall be required to remove all material, plants, equipment, and other paraphernalia, prior to surrendering state issued licenses or permits; or within six months of ceasing operations, whichever comes first.

8.7.5. Findings

In addition to the standard Findings for a Special Permit or Site Plan Approval the Special Permit Granting Authority must also find all the following:

- A. That the AUME facility 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;
- B. That the applicant has satisfied all of the conditions and requirements of this Section and other applicable Sections of this Bylaw;
- C. That the AUME facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest;
- D. That the AUME facility provides adequate security measures to ensure that no individual participant 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;
- E. That the AUME 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.