

Article: Citizen Petition Amendment to Medical Marijuana Treatment Centers and Marijuana Establishment Bylaw of the Town of Leicester.

To see if the Town will vote to authorize an amendment to the Town of Leicester Zoning Bylaw and to its existing "Medical Marijuana Treatment Centers and Marijuana Establishments" Bylaws by inserting new definitions and amending existing definitions in Section 1.3, by inserting a new paragraph to the Schedule of Use Section 3.2.03 Business for Outdoor Cultivation of Cannabis/Marijuana in Suburban Agricultural district (SA). In addition, by inserting additional language to Section 5.15.02 and a new section 5.15.04, entitled Marijuana Outdoor Cultivator Requirements."

Inserting the following definitions to Section 1.3 [As Amended through October 22, 2019]

A. Definition

Insert this definition in to Section 1.3 of our Bylaw.

MARIJUANA OUTDOOR CULTIVATOR: a marijuana establishment that involves the cultivation of mature Cannabis outdoors without the use of artificial lighting in the canopy area, except to maintain immature or vegetative Mother Plants, including but limited to open air, hot house, or cold frame greenhouse production, which is not (a) for personal use or (b) conducted by a licensed caregiver, in amounts not to exceed the state imposed limits for individuals or caregivers."

Amend the existing definition of Marijuana Establishment, Non-Retail in Section 1.3, as follows:

MARIJUANA ESTABLISHMENT, NON-RETAIL: a marijuana establishment that does not involve on-site retail sales to consumers, including Marijuana Cultivators, Marijuana Product Manufacturers that only sell to Marijuana Establishments but not consumers, Marijuana Testing Facilities, and Marijuana Transportation or Distribution Facilities. Not to include Marijuana Outdoor Cultivator.

By Inserting the following language to Section 5.15 Medical Marijuana Treatment Centers and Marijuana Establishments [New Bylaw voted May 7, 2013, Rev' 5/1/2018 and 5/7/2019]

By amending Section 5.15.12, subsections A & B, as shown below:
5.15.02 STANDARDS:

A. General

All aspects of a Medical Marijuana Treatment Center or Marijuana Establishment except Marijuana Outdoor Cultivators must take place at a fixed location within a fully enclosed building with opaque walls and shall not be visible from the exterior of the building. ~~(Except as allowed for Marijuana Outdoor Cultivators, Greenhouses with transparent or translucent walls are prohibited: glass or other transparent roofs are allowed. Transparent~~

or translucent greenhouses are allowable within the opaque perimeter fence of an outdoor cultivation facility. (See related subsection J., Lighting and Section 5.15.04 Marijuana Outdoor Cultivators). No outside storage of marijuana, related supplies, or educational materials is permitted. Medical Marijuana Treatment Centers and Marijuana Establishments are not permitted as a home occupation. Site Plan Review is required for all Medical Marijuana Treatment Centers, Marijuana Outdoor Cultivators and Marijuana Establishments, including when the facility will reuse an existing structure.

B. Buffer Requirements

No Medical Marijuana Treatment Center or Marijuana Establishment may be located within required buffer areas. Buffers shall be 500 feet for Medical Marijuana Treatment Centers and Marijuana Retailers, Consumer Sales Only and 200 feet for Marijuana Establishments, Non-Retail, from the following: residential zoning districts (SA, R1, and R2), and pre-existing public or private schools (pre-school through grade 12), except that buffer from the SA district shall not apply to Marijuana Outdoor Cultivators. Distance shall be measured in a straight line as the shortest between the Medical Marijuana Treatment Center or Marijuana Establishment building and residential district boundaries, and as a straight line from the nearest point of the property line in question to the nearest point of the property line where the Medical Marijuana Treatment Center or Marijuana Establishment is or will be located for schools.¹

Amend Section 3.2.03, Business, by inserting use number 22, Marijuana Outdoor Cultivator as shown below (and renumbering existing uses 22 – 29 accordingly):

3.2.03 BUSINESS		SA	R1	R2	B	CB	I	BI-A	HB-1 & HB-2
18.	Medical Marijuana Treatment Center (Planning Board Site Plan Review Required)	N	N	N	Y	N	Y	Y	Y
19.	Marijuana Retailer, Consumer Sales Only (Special Permits issued by the Planning Board)	N	N	N	SP	N	SP	SP	SP
20.	Marijuana Establishment, Non-Retail (Planning Board Site Plan Review Required)	N	N	N	Y	N	Y	Y	Y
21.	Marijuana Social Consumption Facility	N	N	N	N	N	N	N	N
<u>22.</u>	<u>Marijuana Outdoor Cultivator</u>	<u>SP</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>

Amend Section 5.6, Greenville Village Neighborhood Business District (NB), Subsection 5.6.04, Prohibited Uses, by adding the following text:

5.6.04.3. All types of Marijuana Establishments regulated by Section 5.15.

To Amend the Leicester Zoning Bylaws as Amended through October 22, 2019 (Section 5.15) by inserting a proposed new section Section 5.15.04 entitled “Outdoor Marijuana Cultivation, Requirements” [See, New Bylaw voted May 7, 2013, Revised 5/1/2018 and 5/7/2019]²

5.15.04 MARIJUANA OUTDOOR CULTIVATOR REQUIREMENTS

A. Purpose

The intent of this Section is to address local siting and land use concerns in relation to the legalization of medical and recreational marijuana in the Commonwealth following ballot initiatives in 2012 and 2016. The granting of a Special Permit by the Town of Leicester does not supersede state or federal laws or pre-empt an applicant from complying with all relevant state and federal laws. In addition, the purpose of this bylaw is to update the Marijuana Establishment Bylaw and to regulate Marijuana Outdoor Cultivators, to incorporate the recent circular issued by the Cannabis Control Commission entitled “Guidance for Farmers” and to protect the integrity of natural resources in the Town of Leicester³

B. Applicability

A Special Permit under this section shall be required from the Planning Board for any Marijuana Outdoor Cultivator as a principal or accessory use, or combination of uses involving a Marijuana Outdoor Cultivator.

C. Performance Standards

1. No Marijuana Outdoor Cultivator shall be located within 500 feet (measured from edge of building or occupied space to edge of building or occupied space) of any public or private school providing education in kindergarten or any of grades 1 through 12, any public playground, or licensed daycare.
2. The minimum lot size for this use shall be fifteen (15) acres. In addition, the Town establishes the following minimal ratios of acreage for outdoor cultivation based on the following footage of Canopy:

<u>Tier:</u>	<u>Footage of Canopy</u>	<u>Acreage required</u>
<u>Tier 1:</u>	<u>up to 5,000 s.f canopy</u>	<u>15 acres</u>
<u>Tier 2:</u>	<u>5,001 to 10,000 s.f.</u>	<u>25 acres</u>
<u>Tier 3:</u>	<u>10,001 to 20,000 s.f.</u>	<u>30 acres</u>
<u>Tier 4:</u>	<u>20,001 to 30,000</u>	<u>35 acres</u>

² Section 5.15.03 will remain in effect establishing Special Permit Requirements **5.15.03 SPECIAL PERMIT REQUIREMENTS:** The Planning Board shall be the Special Permit Granting Authority for all Marijuana Establishments. Applications shall be submitted in accordance with the Planning Board’s Special Permit Regulations. In addition to the special permit approval criteria for the applicable zoning district and the Planning Board’s Special Permit Regulations, the Planning Board shall find that the proposed use meets the requirements of this section 5.15.

³ See, e.g. Guidance for Farmers, Cannabis Control Commission as revised on January 16, 2020

Tier 5:	30,001 to 40,000	40 acres
Tier 6:	40,001 to 50,000	45 acres
Tier 7:	50,001 to 60,000	50 acres
Tier 8:	60,001 to 70,000	50 acres
Tier 9:	70,001 to 80,000	50 acres
Tier 10:	80,001 to 90,000	50 acres
Tier 11:	90,001 to 100,000	50 acres

3. No fertilizers, compost, soils, materials, machinery, or equipment shall be stored within the required front, side, and rear yard setbacks.
4. The minimum setback from all property lines shall be 200 feet.
5. Marijuana not grown inside a securable structure shall be enclosed within a minimum of eight (8') foot opaque perimeter security fence to prevent unauthorized entry to the cultivation facility with signs notifying observers that it is a Limited Access Area.
6. The establishment shall not allow any person under 21 years of age to volunteer or work for the marijuana establishment;
7. The outdoor cultivation facility shall comply in every respect with the requirements of 935 CMR 500.110 (6) which regulates "Security and Alarm Requirements for Marijuana Establishments Operating Outdoors." The outdoor cultivation facility shall:
 - a). Implement adequate security measures to ensure that outdoor areas are not readily accessible to unauthorized individuals and to prevent and detect diversion, theft or loss of Marijuana which shall, at a minimum, include:
 - b). A perimeter security fence designed to prevent unauthorized entry to the cultivation facility with signs notifying observers that it is a Limited Access Area;
 - c). Commercial-grade, nonresidential locks;
 - d). A security alarm system that shall: be continuously monitored, whether electronically, by a monitoring company or other means determined to be adequate by the Commission; and provide an alert to designated employees of the Marijuana Establishment within five minutes after a notification of an alarm or a system failure, either by telephone, email or text message.
 - e). Video cameras at all points of entry and exit and in any parking lot which shall be appropriate for the normal lighting conditions of the area under surveillance. The cameras shall be directed at all safes, vaults, sales areas, and areas where Marijuana is cultivated, harvested, Processed, prepared, stored, handled, Transferred or dispensed and for the purpose of securing cash. Cameras shall be angled so as to allow for the capture of clear and certain identification of any Person entering or exiting the Marijuana Establishment or area;

- f). 24-hour recordings from all video cameras that are available immediate viewing by the Commission on request and that are retained for at least 90 calendar days. Recordings shall not be destroyed or altered, and shall be retained as long as necessary if the Marijuana Establishment is aware of a pending criminal, civil or administrative investigation or legal proceeding for which the recording may contain relevant information;
- g). The ability to immediately produce a clear, color still image whether live or recorded;
- h). A date and time stamp embedded in all recordings, which shall be synchronized and set correctly at all times and shall not significantly obscure the picture;
- i). The ability to remain operational during a power outage; and
- j). A video recording that allows for the exporting of still images in an industry standard image format, including .jpg, .bmp and .gif. Exported video shall have the ability to be archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place. Exported video shall also have the ability to be saved in an industry standard file format that may be played on a standard computer operating system. All recordings shall be erased or destroyed prior to disposal.
- k). All security system equipment and recordings shall be maintained in a secure location so as to prevent theft, loss, destruction and alterations.
- l). In addition to the requirements listed in 935 CMR 500.110(4)(a) and (b), the Marijuana Establishment shall have a back-up alarm system, with all capabilities of the primary system, provided by a company supplying commercial grade equipment, which shall not be the same company supplying the primary security system, or shall demonstrate to the Commission's satisfaction alternate safeguards to ensure continuous operation of a security system.
- m). Access to surveillance areas shall be limited to Persons that are essential to surveillance operations, Law Enforcement Authorities acting within their lawful jurisdiction, police and fire departments, security system service personnel and the Commission. A current list of authorized employees and service personnel that have access to the surveillance room must be available to the Commission on request. If the surveillance room is on-site of the Marijuana Establishment, it shall remain locked and shall not be used for any other function.
- n). All security equipment shall be in good working order and shall be inspected and tested at regular intervals, not to exceed 30 calendar days from the previous inspection and test.
- o). Security plans and procedures shared with Law Enforcement Authorities pursuant to 935 CMR 500.110(1)(o) shall include: a description of the location and operation of the

security system, including the location of the central control on the Premises, a schematic of security zones, the name of the security alarm company and monitoring company, if any, a floor plan or layout of the facility in a manner and scope as required by the municipality; and, a safety plan for the Manufacture and production of Marijuana Products as required pursuant to 935 CMR 500.101(1)(d)3.c.

p). Each licensee shall file an emergency response plan with the Leicester Fire and Police Department

q). No Outdoor Marijuana Cultivation 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.

8. In reviewing a special permit under this section the Board shall consider the impact of the proposal on the following:

a. Character of the neighborhood to include visual compatibility with surrounding uses.

b. Proximity to other licensed marijuana uses to prevent clustering.

c. Relationship to surrounding uses to avoid unnecessary exposure to minors.

d. Site design and other development related site impacts.

e. No 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 Establishment or at any adjoining use or property, except as allowed under a Special Permit granted to a Marijuana Cultivator, outdoors. Outdoor cultivation of marijuana will implement industry best practice to eliminate any noticeable trace of marijuana odor at the perimeter of property of the cultivator site.

9. Liability Insurance Coverage or Maintenance of Escrow as required in 935 CMR 500(10).

These amendments establish permitting requirements and reasonable regulations for Marijuana Outdoor Cultivators