

Town of Shirley Massachusetts



WARRANT

for the

2018 SPECIAL TOWN MEETING

Ayer-Shirley Regional Middle School
Auditorium, 1 Hospital Road
Beginning Monday, March 5, 2018 at 7:15PM

**Town of Shirley Warrant, Special Town Meeting,
Monday, March 5, 2018**

ORDER OF ARTICLES

ART. #TITLE	PAGE
1. Article 1	3
2. Article 2	4
3. Article 3	5
4. Article 4	12
5. Article 5	19
6. Article 6	27

NOTICE

If the business of this Warrant for the Special Town Meeting is not concluded on Monday, March 5, 2018, it is proposed to adjourn as follows, provided that the Meeting so votes: to Monday , March 12, 2018.

**Town of Shirley
Special Town Meeting
March 5, 2018
Warrant**

Middlesex, ss.

Commonwealth of Massachusetts

To any of the Constables of the Town of Shirley in said County,

Greetings:

In the name of the Commonwealth aforesaid, you are hereby required to notify and warn the Inhabitants of said Town, qualified to vote in Town affairs, to assemble in the Auditorium of the Ayer-Shirley Regional Middle School at 1 Hospital Road in Shirley on Monday, the fifth day of March 2018 at 7:15 p.m., to consider the following:

Article 1: Prohibit All Recreational (Non-Medical) Marijuana Establishments

To see if the Town will vote to amend the Protective Zoning Bylaws Section 2, “Basic Requirements for All Districts,” Subsection 2.2, “Prohibited Uses,” by inserting a new subsection “p,” as follows, or take any other action relative thereto:

2.2.2 The following uses are specifically prohibited in the Town of Shirley:

- p. All types of non-medical “marijuana establishments,” including marijuana cultivators, independent testing laboratories, marijuana product manufacturers, marijuana retailers, or any other type of licensed marijuana-related business, as defined by Massachusetts General Law, Chapter 94G, Section 1, and any regulations promulgated thereunder.

SUMMARY: Approval of this article will amend the Protective Zoning Bylaws to prohibit all non-medical marijuana establishments in the Town of Shirley. Pursuant to state law, in a community that voted “yes” on Question 4 at the November 8, 2016 State Election, like Shirley, this bylaw must also be approved by the voters at an election.

A 2/3's vote is required for the passage of this article.

**Sponsored by:
PLANNING BOARD**

Board of Selectmen:

Finance Committee:

Article 2: Prohibit Non-Medical Marijuana Retailers only

To see if the Town will vote to amend the Town Protective Zoning Bylaws , Section 2, “Basic Requirements for All Districts,” Subsection 2.2, “Prohibited Uses,” by inserting a new subsection “p,” as follows, or take any other action relative thereto:

2.2.2 The following uses are specifically prohibited in the Town of Shirley:

p. “Marijuana Retailers,” as defined by Massachusetts General Law, Chapter 94G, Section 1, and any regulations promulgated thereunder.

SUMMARY: Approval of this article will amend the Protective Zoning Bylaws to prohibit non-medical marijuana retailers only in the Town of Shirley. Pursuant to state law, in a community that voted “yes” on Question 4 at the November 8, 2016 State Election, like Shirley, the bylaw must also be approved by the voters at an election. Other non-medical marijuana establishment uses, such as cultivation, processing, and manufacturing, will not be prohibited and will be subject to applicable zoning requirements.

A 2/3's vote is required for the passage of this article.

***Sponsored by:
PLANNING BOARD***

Board of Selectmen:

Finance Committee:

Article 3: Adopt Zoning for Medical Marijuana Treatment Centers

To see if the Town will vote to amend Protective Zoning Bylaws to address medical marijuana establishments as follows, [or take any other action relative thereto](#):

Amend Section 3, District Regulations, Subsection 3.9, Lancaster Road Commercial District:

By inserting, in Section 3.9.1.b, Uses Allowed by Special Permit from the Planning Board, the following;

15. Medical Marijuana Treatment Center

Amend Section 3, District Regulations, Subsection 3.10, Industrial District:

By inserting in Section 3.10.1.b, Uses Allowed by Special Permit from the Planning Board the following:

5. Medical Marijuana Treatment Center

Amend Section 4, Special Regulations by inserting a new Section 4.18, “Medical Marijuana Treatment Center” as follows:

4.18. Medical Marijuana Treatment Center

4.18.1. Purpose

- a. To provide for the placement of Medical Marijuana Treatment Centers in appropriate locations and under appropriate conditions.
- b. To minimize the adverse impacts of Medical Marijuana Treatment Centers on adjacent properties, residential neighborhoods, schools, and other places where children congregate, local historic districts, and other sensitive land uses.
- c. To regulate the siting, design, placement, security, safety monitoring, modification, and discontinuance of Medical Marijuana Treatment Centers.

4.18.2. Definitions

For definitions pertinent to this section, see Section 11 - Definitions.

Terms used herein and not expressly defined within this Bylaw shall be defined as set forth in 105 CMR 725.000, et seq., as those regulations may be amended or

superseded.

4.18.3. Application Requirements

- a. The Shirley Planning Board is hereby designated the Special Permit Granting Authority to grant special permits for Medical Marijuana Treatment Centers. The application requirements and procedures will be conducted by the Planning Board pursuant to Section 8, Administration, of these Protective Zoning Bylaws.
- b. No special permit will be granted by the Planning Board for a Medical Marijuana Treatment Center unless an application is submitted containing the information outlined in Section 4.18.3.c. below.
- c. In addition to the submittal requirements and review standards provided in Section 8 of these Protective Zoning Bylaws pertaining to administration, application and submission requirements, powers, hearings and time limits, each applicant for a special permit under this section shall also submit the following:
 1. The name and address of each owner of the Medical Marijuana Treatment Center;
 2. Copies of all documentation demonstrating application status for licensing under State law, and registrations or licenses issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the Medical Marijuana Treatment Center, as applicable;
 3. Evidence that the Applicant has site control and the right to use the site for a facility, which evidence may take the form of a deed or valid purchase and sale agreement; or, in the case of a lease, a notarized statement from the property owner and a copy of the lease agreement;
 4. In addition to what is normally required in a Site Plan Review application pursuant to Section 7 of these Protective Zoning Bylaws, details showing all proposed security measures for the premises, including lighting, fencing, gates, alarms, etc., which seek to ensure the safety of employees and patrons and to protect the premises from theft or other criminal activity;
 5. A Management Plan that includes a description of all activities to occur on site, including all provisions for the delivery of medical marijuana and related products to and from the Medical Marijuana Treatment Center.

4.18.4. Use Regulations

The following regulations shall apply to uses under Section 4.18:

- a. No marijuana shall be smoked, eaten, or otherwise consumed or ingested on the premises, except as expressly authorized by law.
- b. In no event shall a facility be open to the public, nor shall any sale or other distribution of medical marijuana occur upon the premises or via delivery to or from the premises, between the hours of 8:00 PM and 8:00 AM.

4.18.5. Location and Physical Requirements

- a. Medical Marijuana Treatment Centers are permitted within the following Zoning Districts and require both a Special Permit and Site Plan Review: Lancaster Road Commercial District (LRC), and the Industrial District (I).
- b. All aspects of a Medical Marijuana Treatment Center relative to the cultivation, possession, processing, sales, dispensing, or administration of marijuana, marijuana products, related supplies, or educational materials must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the building.
- c. If marijuana or marijuana products are to be delivered to, or shipped from, the building, these activities must take place in a secure, monitored location to guard against theft and must be fully shielded from public view by fencing or other means deemed suitable by the Planning Board.
- d. No outside storage of marijuana, marijuana products, related supplies, or educational materials is permitted.
- e. Ventilation—All facilities shall be ventilated in such a manner that:
 - 1. No pesticides, insecticides or other chemicals or products used in the cultivation or processing of marijuana and/or marijuana products are dispersed into the outside atmosphere; and
 - 2. 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 Medical Marijuana Treatment Center or at any adjoining use or property.
- f. Noise
 - 1. Noise generated by a Medical Marijuana Treatment Center, and its associated equipment and machinery, shall conform at a minimum to applicable State and local noise regulations, including the Massachusetts Department of Environmental Protection's Division of Air Quality noise

regulations, 310 CMR 7.10. In addition, for the purposes of this Bylaw, a source of sound will be considered in violation if the source:

- (a) Increases the broadband sound level by more than 5 dB(A) above the pre-construction ambient noise level;
 - (b) Increases the broadband sound level by more than 5 dB(C) above the pre-construction ambient noise level;
 - (c) Produces a "pure tone" condition, when an octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more; or
 - (d) Results in sound or noise levels greater than 30 dB(A).
2. Sound levels must comply with the above stated criteria, at both the property line and at the nearest inhabited residence. In addition, the said criteria shall be met at any property line that is subject to sound elevations higher than ambient sound as a result of higher or lower topography. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during the quietest part of the day or night. All testing required by this Bylaw shall be done by a licensed professional acoustical engineer chosen by the Planning Board and paid for by the applicant. All testing shall be done in accordance with the professional standards of the appropriate accrediting agencies.

4.18.6. Reporting

The Medical Marijuana Treatment Center shall submit the following to the Town Building Commissioner by January 31 of each year:

- a. An updated copy of the information supplied in Sections 4.18.3.c.1 and 4.18.3.c.5 of this Bylaw; and
- b. A copy of the current registration(s) or license(s) issued to the Medical Marijuana Treatment Center by the Commonwealth of Massachusetts and any of its agencies.

4.18.7. Restrictions and Prohibitions

- a. The Medical Marijuana Treatment Center shall not be located within five hundred (500) feet of the following, as measured from the Medical Marijuana Treatment Center including any building(s) and/or area(s) actively used, including but not limited to, a parking lot or driveway:
 1. A building containing another Medical Marijuana Treatment Center, except for facilities that are owned or leased by the same operator; or
 2. A public or private elementary school, middle school, secondary school, preparatory school, licensed daycare center, or any other facility in which children commonly congregate in an organized, ongoing, formal basis; or
 3. Owned by and operated as part of the campus of any private or public institution of higher learning; or
 4. A public library; or
 5. A playground or park; or
 6. A residentially zoned lot with an existing dwelling; or
 7. An existing house of worship.
- b. The Medical Marijuana Treatment Center shall not display on-premises signage or other marketing on the exterior of the building or in any manner visible from the public way promoting or encouraging the use of marijuana or other drugs by minors. All signage shall comply with the requirements of 105 CMR 725.000, et seq., as it may be amended or superseded, and the further requirements of the Protective Zoning Bylaws.
- c. Medical Marijuana Treatment Centers shall not have drive-through service.

4.18.8. Findings

In addition to the findings required under all other applicable sections of these Protective Zoning Bylaws, the Special Permit Granting Authority will find that the proposed use:

- a. Meets all of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will as proposed be in compliance with all applicable State laws and regulations;
- b. Will provide copies of all registrations and licenses required to operate the Medical Marijuana Treatment Center, and a copy of a signed Host Community Agreement with the Town of Shirley, in accordance with Massachusetts General Law Chapter 94G and subsequent regulations, to the

Town Building Commissioner prior to the issuance of a Certificate of Occupancy;

- c. Is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest as defined in Massachusetts General Law Chapter 40A, Section 11;
- d. Provides a secure waiting area;
- e. Provides adequate security measures to ensure the health and safety of all individuals, and that the storage and/or location of cultivation of marijuana is adequately secured in enclosed, locked facilities; and
- f. Adequately addresses issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the facility, and adequately mitigates the impacts of vehicular and pedestrian traffic on neighboring uses.

4.18.9. Transfer/Discontinuance of Use

- a. 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 a Medical Marijuana Treatment Center.
- b. Any Medical Marijuana Treatment Center permitted under this section shall remove all material, plants, equipment, and other paraphernalia in compliance with 105 CMR 725.105 (J) and (O) upon the expiration, revocation, or voiding of its Massachusetts Department of Public Health (DPH) Registration and/or its license issued by the Cannabis Control Commission.

4.18.10. All other applicable provisions of the Shirley Protective Zoning Bylaws shall also apply.

4.18.11. If any section or portion of this Section 4.18 of the Bylaw is ruled invalid by a court of competent jurisdiction, such ruling will not affect the validity of the remainder of this Bylaw.

Amend Section 11, Definitions:

By adding the following new definitions in the correct alphabetical sequence:

Medical Marijuana Treatment Center: As defined by 105 CMR 725.000, et seq., as it may be amended or superseded, and pursuant to all other applicable State laws and regulations, a use operated by a not-for-profit entity registered and approved by the Massachusetts Department of Public Health in accordance with 105 CMR 725.00, also known as a Registered Marijuana Dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible MIP's, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational material to registered qualifying patients or their personal caregivers. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of marijuana.

SUMMARY: Approval of this article will amend the Protective Zoning Bylaws to regulate the location and operation of Medical Marijuana Treatment Centers in the Town of Shirley. As defined under state law and licensed by the Department of Public Health, a Medical Marijuana Treatment Center includes cultivation, processing, and sales of medical-use marijuana under one ownership, although the individual components may be divided between two locations.

A 2/3's vote is required for the passage of this article.

***Sponsored by:
PLANNING BOARD***

Board of Selectmen:

Finance Committee:

Article 4: Adopt Zoning for Medical Marijuana Treatment Centers and Non-Medical Marijuana Establishments

To see if the Town will vote to amend the Protective Zoning Bylaws to address medical marijuana treatment centers and non-medical marijuana establishments, as follows, or take any other action relative thereto:

Amend Section 3, District Regulations, Subsection 3.9, Lancaster Road Commercial District:

By inserting in Section 3.9.1.b, Uses Allowed by Special Permit from the Planning Board, the following:

15. Marijuana Business

Amend Section 3, District Regulations, Subsection 3.10, Industrial District:

By inserting in Section 3.10.1.b, Uses Allowed by Special Permit from the Planning Board, the following:

5. Marijuana Business

Amend Section 4, Special Regulations:

By inserting a new section, Section 4.18, “Marijuana Business” as follows:

4.18. Marijuana Business

4.18.1. Purpose

- a. To provide for the placement of Marijuana Businesses in appropriate locations and under appropriate conditions.
- b. To minimize the adverse impacts of Marijuana Businesses on adjacent properties, residential neighborhoods, schools, and other places where children congregate, local historic districts, and other sensitive land uses.
- c. To regulate the siting, design, placement, security, safety monitoring, modification, and discontinuance of Marijuana Businesses.

4.18.2. Definitions

For definitions pertinent to this section, see Section 11 - Definitions.

Terms used herein not defined within this Bylaw shall be defined as set forth in

G.L. c.94G and G.L. c.94I, enacted pursuant to An Act To Ensure Safe Access to Marijuana; Chapter 55 of the Acts of 2017; and, as may be applicable, all regulations which have or may be issued by the Department of Public Health and/or the Cannabis Control Commission, including, but not limited to 105 CMR 725.00 and 935 CMR 500.00, et seq., in accordance therewith.

4.18.3. Application Requirements

- a. The Shirley Planning Board is hereby designated the Special Permit Granting Authority to grant special permits for Marijuana Businesses. The application requirements and procedures will be conducted by the Planning Board pursuant to Section 8, Administration, of these Protective Zoning Bylaws.
- b. No special permit will be granted by the Planning Board for a Marijuana Business unless an application is submitted containing the information outlined in Section 4.18.3.c. below.
- c. In addition to the submittal requirements and review standards provided in Section 8 of these Protective Zoning Bylaws pertaining to administration, application and submission requirements, powers, hearings and time limits, each applicant for a special permit under this section shall also submit the following:
 1. The name and address of each owner of the Marijuana Business;
 2. Copies of all documentation demonstrating application status under State law, and registrations or licenses issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the Marijuana Business, as applicable;
 3. Evidence that the Applicant has site control and the right to use the site for a facility, which evidence may take the form of a deed or valid purchase and sale agreement; or, in the case of a lease, a notarized statement from the property owner and a copy of the lease agreement;
 4. In addition to what is normally required in a Site Plan Review application pursuant to Section 7 of these Protective Zoning Bylaws, details showing all proposed security measures for the premises, including lighting, fencing, gates, alarms, etc., which seek to ensure the safety of employees and patrons and to protect the premises from theft or other criminal activity;
 5. A Management Plan that includes a description of all activities to occur on site, including all provisions for the delivery of marijuana and related products to and from the Marijuana Business.

4.18.4. Use Regulations

The following regulations shall apply to uses under Section 4.18:

- a. No marijuana shall be smoked, eaten, or otherwise consumed or ingested on the premises, except as expressly authorized by law.
- b. In no event shall a facility be open to the public, nor shall any sale or other distribution of marijuana occur upon the premises or via delivery to or from the premises, between the hours of 8:00 PM and 8:00 AM.

4.18.5. Location and Physical Requirements

- a. Marijuana Businesses are permitted within the following Zoning Districts and require both a Special Permit and Site Plan Review: Lancaster Road Commercial District (LRC), and the Industrial District (I).
- b. All aspects of a Marijuana Business relative to the cultivation, possession, processing, sales, dispensing, or administration of marijuana, marijuana products, related supplies, or educational materials must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the building.
- c. If marijuana or marijuana products are to be delivered to, or shipped from, the building, these activities must take place in a secure, monitored location to guard against theft and must be fully shielded from public view by fencing or other means deemed suitable by the Planning Board.
- d. No outside storage of marijuana, marijuana products, related supplies, or educational materials is permitted.
- e. Ventilation—All facilities shall be ventilated in such a manner that:
 - 1. No pesticides, insecticides or other chemicals or products used in the cultivation or processing of marijuana and/or marijuana products are dispersed into the outside atmosphere; and
 - 2. 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 Business or at any adjoining use or property.
- f. Noise
 - 1. Noise generated by a Marijuana Business, and its associated equipment and machinery, shall conform at a minimum to applicable State and local noise regulations, including the Massachusetts Department of Environmental

Protection's Division of Air Quality noise regulations, 310 CMR 7.10. In addition, for the purposes of this Bylaw, a source of sound will be considered in violation if the source:

- (a) Increases the broadband sound level by more than 5 dB(A) above the pre-construction ambient noise level;
 - (b) Increases the broadband sound level by more than 5 dB(C) above the pre-construction ambient noise level;
 - (c) Produces a "pure tone" condition, when an octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more; or
 - (d) Results in sound or noise levels greater than 30 dB(A).
2. Sound levels must comply with the above stated criteria, at both the property line and at the nearest inhabited residence. In addition, the said criteria shall be met at any property line that is subject to sound elevations higher than ambient sound as a result of higher or lower topography. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during the quietest part of the day or night. All testing required by this Bylaw shall be done by a licensed professional acoustical engineer chosen by the Planning Board and paid for by the applicant. All testing shall be done in accordance with the professional standards of the appropriate accrediting agencies.

4.18.6. Reporting

The Marijuana Business shall submit the following to the Town Building Commissioner by January 31 of each year:

- a. An updated copy of the information supplied in Sections 4.18.3.c.1 and 4.18.3.c.5 of this Bylaw; and
- b. A copy of the current registration(s) or license(s) issued to the marijuana establishment by the Commonwealth of Massachusetts and any of its agencies.

4.18.7. Restrictions and Prohibitions

- a. The Marijuana Business shall not be located within five hundred (500) feet of the following, as measured from the Marijuana Business including any building(s) and/or area(s) actively used, including but not limited to, a parking lot or driveway:
 - 1. A building containing another Marijuana Business, except for facilities that are owned or leased by the same operator; or
 - 2. A public or private elementary school, middle school, secondary school, preparatory school, licensed daycare center, or any other facility in which children commonly congregate in an organized, ongoing, formal basis; or
 - 3. Owned by and operated as part of the campus of any private or public institution of higher learning; or
 - 4. A public library; or
 - 5. A playground or park; or
 - 6. A residentially zoned lot with an existing dwelling; or
 - 7. An existing house of worship.
- b. The Marijuana Business shall not display on-premises signage or other marketing on the exterior of the building or in any manner visible from the public way promoting or encouraging the use of marijuana or other drugs. All signage shall comply with the requirements of 105 CMR 725.000, et al., as it may be amended or superseded, and the further requirements of the Protective Zoning Bylaws.
- c. Marijuana Businesses shall not have drive-through service.

4.18.8. Findings

In addition to the findings required under all other applicable sections of these Protective Zoning Bylaws, the Special Permit Granting Authority will find that the proposed use:

- a. Meets all of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will as proposed be in compliance with all applicable State laws and regulations;
- b. Will provide copies of registrations and licenses required to operate the Marijuana Business, and a copy of a signed Host Community Agreement with the Town of Shirley, in accordance with Massachusetts General Law Chapter 94G and subsequent regulations, to the Town Building Commissioner prior to the issuance of a Certificate of Occupancy;
- c. Is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest as defined in Massachusetts General Law Chapter 40A, Section 11;
- d. Provides a secure waiting area;
- e. Provides adequate security measures to ensure the health or safety of all individuals, and that the storage and/or location of cultivation of marijuana is adequately secured in enclosed, locked facilities; and
- f. Adequately addresses issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the facility, and adequately mitigates the impacts of vehicular and pedestrian traffic on neighboring uses.

4.18.9. Transfer/Discontinuance of Use

- a. 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 a Marijuana Business.
- b. Any Marijuana Business permitted under this section shall remove all material, plants, equipment, and other paraphernalia in compliance with 105 CMR 725.105 (J) and (O) upon the expiration, revocation, or voiding of its Massachusetts Department of Public Health (DPH) Registration and/or its license issued by the Cannabis Control Commission.

4.18.10. All other applicable provisions of the Shirley Protective Zoning Bylaws shall also apply.

- 4.18.11. If any section or portion of this Section 4.18 of the Bylaw is ruled invalid by a court of competent jurisdiction, such ruling will not affect the validity of the remainder of this Bylaw.

Amend Section 11, Definitions:

By adding the following new definitions in the correct alphabetical sequence:

Marijuana Business: A Medical Marijuana Treatment Center, Marijuana Establishment, or any combination or part thereof.

Marijuana Establishment: A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer, or any other type of licensed marijuana-related business for the non-medical use of marijuana, as set forth in G.L. 94G, and any regulations promulgated thereunder.

Medical Marijuana Treatment Center: As defined by 105 CMR 725.000, et al., as it may be amended or superseded, and pursuant to all other applicable State laws and regulations, a use operated by a not-for-profit entity registered and approved by the Massachusetts Department of Public Health in accordance with 105 CMR 725.00, also known as a Registered Marijuana Dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible MIP's, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational material to registered qualifying patients or their personal caregivers. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of marijuana.

SUMMARY: Approval of this article will amend the Protective Zoning Bylaws to regulate the location and operation of non-medical marijuana establishments and medical marijuana treatment centers in the Town of Shirley.

A 2/3's vote is required for the passage of this article.

***Sponsored by:
PLANNING BOARD***

Board of Selectmen:

Finance Committee:

Article 5: Adopt Zoning for Medical Marijuana Treatment Centers and Non-Medical Marijuana Establishments, Excluding Non-Medical Marijuana Retailers

To see if the Town will vote to amend the Protective Zoning Bylaws to address medical marijuana treatment centers and non-medical marijuana establishments, excluding non-medical marijuana retailers, as follows, or take any other action relative thereto:

Amend Section 3, District Regulations, Subsection 3.9, Lancaster Road Commercial District:

Insert in Section 3.9.1.b, Uses Allowed by Special Permit from the Planning Board, the following:

15. Marijuana Business

Amend Section 3, District Regulations, Subsection 3.10, Industrial District:

Insert in Section 3.10.1.b, Uses Allowed by Special Permit from the Planning Board, the following:

5. Marijuana Business

Amend Section 4, Special Regulations:

Insert a new Section 4.18, “Marijuana Business,” as follows:

4.18. Marijuana Business

4.18.1. Purpose

- a. To provide for the placement of Marijuana Businesses in appropriate locations and under appropriate conditions.

- b. To minimize the adverse impacts of Marijuana Businesses on adjacent properties, residential neighborhoods, schools, and other places where children congregate, local historic districts, and other sensitive land uses.
- c. To regulate the siting, design, placement, security, safety monitoring, modification, and discontinuance of Marijuana Businesses.

4.18.2. Definitions

For definitions pertinent to this section, see Section 11 - Definitions.

Terms used herein not defined within this Bylaw shall be defined as set forth in G.L. c.94G and G.L. c.94I, enacted pursuant to An Act To Ensure Safe Access to Marijuana; Chapter 55 of the Acts of 2017; and, as may be applicable, all regulations which have or may be issued by the Department of Public Health and/or the Cannabis Control Commission, including, but not limited to 105 CMR 725.00 and 935 CMR 500.00, et seq., in accordance therewith.

4.18.3. Application Requirements

- a. The Shirley Planning Board is hereby designated the Special Permit Granting Authority to grant special permits for Marijuana Businesses. The application requirements and procedures will be conducted by the Planning Board pursuant to Section 8, Administration of these Protective Zoning Bylaws.
- b. No special permit will be granted by the Planning Board for a Marijuana Business unless an application is submitted containing the information outlined in Section 4.18.3.c. below.
- c. In addition to the submittal requirements and review standards provided in Section 8 of these Protective Zoning Bylaws pertaining to administration, application and submission requirements, powers, hearings and time limits, each applicant for a special permit under this section shall also submit the following:
 - 1. The name and address of each owner of the Marijuana Business;
 - 2. Copies of all documentation demonstrating application status under State law, and registrations or licenses issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the Marijuana Business, as applicable;
 - 3. Evidence that the Applicant has site control and the right to use the site for a facility, which evidence may take the form of a deed or valid purchase and sale agreement; or, in the case of a lease, a notarized statement from the property owner and a copy of the lease agreement;

4. In addition to what is normally required in a Site Plan Review application pursuant to Section 7 of these Protective Zoning Bylaws, details showing all proposed security measures for the premises, including lighting, fencing, gates, alarms, etc., which seek to ensure the safety of employees and patrons and to protect the premises from theft or other criminal activity;
5. A Management Plan that includes a description of all activities to occur on site, including all provisions for the delivery of marijuana and related products to and from the Marijuana Business.

4.18.4. Use Regulations

The following regulations shall apply to uses under Section 4.18:

- a. No marijuana shall be smoked, eaten, or otherwise consumed or ingested on the premises, except as expressly authorized by law.
- b. In no event shall a facility be open to the public, nor shall any sale or other distribution of marijuana occur upon the premises or via delivery to or from the premises, between the hours of 8:00 PM and 8:00 AM.

4.18.5. Location and Physical Requirements

- a. Marijuana Businesses, as defined herein, are permitted within the following Zoning Districts and require both a Special Permit and Site Plan Review: Lancaster Road Commercial District (LRC), and the Industrial District (I).
- b. All aspects of a Marijuana Business must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the building.
- c. If marijuana or marijuana products are to be delivered to, or shipped from, the building, these activities must take place in a secure, monitored location to guard against theft and must be fully shielded from public view by fencing or other means deemed suitable by the Planning Board.
- d. No outside storage of marijuana, marijuana products, related supplies, or educational materials is permitted.

e. Ventilation—All facilities shall be ventilated in such a manner that:

1. No pesticides, insecticides or other chemicals or products used in the cultivation or processing of marijuana and/or marijuana products are dispersed into the outside atmosphere; and
2. 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 Business or at any adjoining use or property.

f. Noise

1. Noise generated by a Marijuana Business, and its associated equipment and machinery, shall conform at a minimum to applicable State and local noise regulations, including the Massachusetts Department of Environmental Protection's Division of Air Quality noise regulations, 310 CMR 7.10. In addition, for the purposes of this Bylaw, a source of sound will be considered in violation if the source:
 - (a) Increases the broadband sound level by more than 5 dB(A) above the pre-construction ambient noise level;
 - (b) Increases the broadband sound level by more than 5 dB(C) above the pre-construction ambient noise level;
 - (c) Produces a "pure tone" condition, when an octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more; or
 - (d) Results in sound or noise levels greater than 30 dB(A).
2. Sound levels must comply with the above stated criteria, at both the property line and at the nearest inhabited residence. In addition, the said criteria shall be met at any property line that is subject to sound elevations higher than ambient sound as a result of higher or lower topography. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during the quietest part of the day or night. All testing required by this Bylaw shall be done by a licensed professional acoustical engineer chosen by the Planning Board and paid for by the applicant. All testing shall be done in accordance with the professional standards of the appropriate accrediting

agencies.

4.18.6. Reporting

The Marijuana Business shall submit the following to the Town Building Commissioner by January 31 of each year:

- a. An updated copy of the information supplied in Sections 4.18.3.c.1 and 4.18.3.c.5 of this Bylaw; and
- b. A copy of the current registration(s) or license(s) issued to the Marijuana Business by the Commonwealth of Massachusetts and any of its agencies.

4.18.7. Restrictions and Prohibitions

- a. The Marijuana Business shall not be located within five hundred (500) feet of the following, as measured from the Marijuana Business including any building(s) and/or area(s) actively used, including but not limited to, a parking lot or driveway:
 1. A building containing another Marijuana Business, except for facilities that are owned or leased by the same operator; or
 2. A public or private elementary school, middle school, secondary school, preparatory school, licensed daycare center, or any other facility in which children commonly congregate in an organized, ongoing, formal basis; or
 3. Owned by and operated as part of the campus of any private or public institution of higher learning; or
 4. A public library; or
 5. A playground or park; or
 6. A residentially zoned lot with an existing dwelling; or
 7. An existing house of worship.
- b. The Marijuana Business shall not display on-premises signage or other marketing on the exterior of the building or in any manner visible from the public way promoting or encouraging the use of marijuana or other drugs. All signage shall comply with the requirements of 105 CMR 725.000, et al., as it may be amended or superseded, and the further requirements of the Protective Zoning Bylaws.
- c. Marijuana Businesses shall not have drive-through service.

4.18.8. Findings

In addition to the findings required under all other applicable sections of these Protective Zoning Bylaws, the Special Permit Granting Authority will find that the proposed use:

- a. Meets all of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will as proposed be in compliance with all applicable State laws and regulations;
- b. Will provide copies of registrations and licenses required to operate the Marijuana Business, and a copy of a signed Host Community Agreement with the Town of Shirley, in accordance with Massachusetts General Law Chapter 94G and subsequent regulations, to the Town Building Commissioner prior to the issuance of a Certificate of Occupancy;
- c. Is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest as defined in Massachusetts General Law Chapter 40A, Section 11;
- d. Provides a secure waiting area;
- e. Provides adequate security measures to ensure the health or safety of all individuals, and that the storage and/or location of cultivation of marijuana is adequately secured in enclosed, locked facilities; and
- f. Adequately addresses issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the facility, and adequately mitigates the impacts of vehicular and pedestrian traffic on neighboring uses.

4.18.9. Transfer/Discontinuance of Use

- a. 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 a Marijuana Business.
- b. Any Marijuana Business permitted under this section shall remove all material, plants, equipment, and other paraphernalia in compliance with 105 CMR 725.105 (J) and (O) upon the expiration, revocation, or voiding of its Massachusetts Department of Public Health (DPH) Registration and/or its license issued by the Cannabis Control Commission.

4.18.10. All other applicable provisions of the Shirley Protective Zoning Bylaws shall also apply.

- 4.18.11. If any section or portion of this Section 4.18 of the Bylaw is ruled invalid by a court of competent jurisdiction, such ruling will not affect the validity of the remainder of this Bylaw.

Amend Section 11, Definitions:

By adding the following new definitions in the correct alphabetical sequence:

Marijuana Business: A Medical Marijuana Treatment Center, Marijuana Establishment, or any combination or part thereof, but excluding Marijuana Retailers.

Marijuana Establishment: A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer, or any other type of licensed marijuana-related business for the non-medical use of marijuana, all as defined in G.L. 94G and any regulations promulgated hereunder.

Medical Marijuana Treatment Center: As defined by 105 CMR 725.000, et al., as it may be amended or superseded, and pursuant to all other applicable State laws and regulations, a use operated by a not-for-profit entity registered and approved by the Massachusetts Department of Public Health in accordance with 105 CMR 725.00, also known as a Registered Marijuana Dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible MIP's, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational material to registered qualifying patients or their personal caregivers. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of marijuana.

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 as defined in G.L. c.94G and any regulations promulgated hereunder..

SUMMARY: Approval of this article will amend the Protective Zoning Bylaws to regulate the location and operation of all non-medical marijuana establishment facilities and medical marijuana treatment centers in the Town, excepting marijuana retailers.

A 2/3's vote is required for the passage of this article.

***Sponsored by:
PLANNING BOARD***

Board of Selectmen:

Finance Committee:

Article 6: Accept Statute for Non-Medical Marijuana Local Sales Tax

To see if the Town will vote to accept Massachusetts General Law Chapter 64N, Section 3 to impose a local sales tax upon the sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the Town to anyone other than a marijuana establishment at a rate of three percent (3%) of the total sales price received by the marijuana retailer as consideration for the sale of marijuana or marijuana products, and further that said tax shall take effect on the first day of the calendar quarter commencing at least thirty days after such vote at Town Meeting, or any other date determined by the Commissioner of Revenue, or take any other action relative thereto.

SUMMARY: Approval of this article will impose a 3% sales tax on the retail sale of non-medical marijuana only in the Town.

A majority vote is required for the passage of this article.

***Sponsored by:
PLANNING BOARD***

Board of Selectmen:

Finance Committee:

And you will serve this Warrant by posting true and attested copies of same at the Town Offices and the Hazen Memorial Library in Shirley Village, at the Senior Center in Shirley Center, and a like copy at the United States Post Office in Shirley Village, fourteen days at least before the time appointed for said Meeting.

Hereof fail not and make due return of this Warrant with your doings therein to one of the Selectmen, on or before the date of the Meeting.

Given under our hands at Shirley, this _____ Day of _____, 2018.

BOARD OF SELECTMEN

Holly Haase, Chair

Enrico Cappucci, Clerk

Debra Flagg

A true copy.
Attest:

William Oelfke
Town Clerk

* * * *