

CHRISTINE McKIERNAN, M.D. - Chair
KAREN WALSH PIO - Clerk
TONY JUDGE
STEPHEN FRANTZ
MICHAEL ROSNER, M.D.

SHARON HART, Director of Public Health

NOTICE

**BOARD OF HEALTH MEETING
&
AGENDA**

May 6, 2024

6:00 p.m.

NOTE: Not all the topics listed in this notice may actually be reached for discussion. In addition, the topics listed are those which the Chair reasonably expects will be discussed as of the date of this notice.

To: Board of Health Members

From: Sharon D. Hart, Director of Public Health

Re: A Board of Health Meeting will be held on Monday, May 6, 2024 at 6:00 p.m. at the South Hadley Senior Center.

- 1: Chair to Call the Meeting to Order**
- 2: Acceptance of the Minutes of the April 9, 2024 meeting.**
- 3: Announcements/Open Forum (10 Minutes)**
- 4: Board Reorganization**
- 5: Director's Report**
- 6: New Business:**
 - (a) Variances to Title 5 Groundwater**
 - (b) Remote Participation Policy**

- 7: **Old Business:**
 - (a): **Pollinator Species Update**
 - (b): **Cannabis & Kratom**
 - (c): **Marijuana Bylaw – Karen Walsh Pio**
 - (c): **Update - South Hadley Drug & Alcohol Prevention Coalition – Karen Walsh Pio**

- 8: **Set Next Meeting Date – (TBD) at 6:00 p.m. at South Hadley Public Library**

- 9: **7:45 p.m. Executive Session – Pursuant to G.L. c.30A sec 21(a)(3), and subject to the Chair’s declaration that the public discussion of meeting minutes will have a detrimental impact on the litigating position of the Board, the Board will go into Executive Session to discuss strategy with respect to litigation in the matter of Chicopee Concrete Service, Inc. v. Hutchinson et al. (South Hadley Planning Board and Board of Health) C.A. No. 2180CV00038;**
 - a. **Approval of February 12, 2024 executive session minutes**

- 10: **Adjourn meeting**

South Hadley
Board of Health Meeting

Date: 4.9.2024 **Time:** 6:15 p.m.

Members: Christine McKiernan, Chair Present Tony Judge, Vice-Chair Present
Karen Walsh Pio, Clerk Present
Jessica Collins Absent Stephen Frantz Absent

1. Chair to call the meeting to order @ 6:15 p.m.
2. Acceptance of the meeting minutes of 3.12.2024

Christine McKiernan would like clarification of minutes to re: synthetic vs natural

Motion to accept minutes of 3.12.2024 as amended
Motion: Karen Walsh Pio, 2nd Tony Judge
All in favor: Christine McKiernan - aye
Karen Walsh Pio – aye
Tony Judge - aye

3. Announcements/Open Forum (10 Minutes) - NONE
4. Board Reorganization – Table to next week. Dr. Rosner’s time starts tomorrow per Town Clerk’s Office.
5. Director’s Report – Director Hart spoke to the report.

Director Hart spoke to the project that she worked on which was identifying through the State’s Disease Surveillance Program the Tick-borne Diseases and mapping them for the past year for South Hadley. Discussion on the need of an Epidemiologist for the Health Department who would have access to the State’s Disease Surveillance Program and could continue to monitor and map disease trends within the community.

She spoke to the Public Health Excellence Grant – The grant received is \$509,000. We have hired:

1 Regional PHE Coordinator, 2 Regional Health Inspectors and 1 Regional Nurse

Next, she will be working on Wastewater Based Epidemiology (WBE) testing for High Risk Substances.

6. New Business –
 - (a). Emergency Order to vacate: 14 Tampa Street. The Board did not ratify. Per review of the state sanitary code 100 CMR 400.000, it is not required for the Board of Health to ratify condemnations. Rather the role of the board is only to hear any appeals that are raised. Therefore, in the future, ratification of condemnations will no longer appear on the Board of Health agendas unless there is an appeal by the owner.
 - (b): Opioid Mitigation Funds/Survey -- Update was given on the survey.
The Town Administrator identified that the Opioid Funding can be taken out of Capital Stabilization and put into another account that she would have access to or possibly in

combination with the Health Department. The TA said that she would email more information. DLS information regarding the funding was included in the Board's packet.

(c): **Public Health Excellence Grant - Update** was given with the Director's Report.

7. Old Business –

(a): **South Hadley Drug & Alcohol Prevention Coalition – Karen Walsh Pio**

Karen Walsh Pio announced that last month's meeting had been cancelled. The next meeting is tomorrow 4.10.2024 and that she will be attending. She had received the agenda and talked to each topic.

(b): **Pollinator Species - Update from Christine McKiernan** that the Selectboard will review on April 16, 2024, and the Conservation Commission will review on April 17, 2024.

(c): **Cannabis & Kratom Regulation – Karen Walsh Pio** spoke to the Town's Marijuana By-law. Discussion on whether Psilocybin should be added to the Regulation or be kept separately. Also, whether Cannabis & Kratom should be in separate regulations. Director Hart to check on complete Marijuana By-law to bring to next meeting for Board review. Topic tabled to next meeting.

Set Next Meeting Date: Monday, May 6, 2024 at 6:00 p.m. at South Hadley Public Library.

There was no quorum to approve minutes of the Executive Session with respect to the litigation in the matter of *Chicopee Concrete Service, Inc. v. Hutchinson et al* (Planning Board and Board of Health), as Karen Walsh Pio was not in attendance at that meeting. Approval of the minutes will be tabled until the May 6, 2024, meeting.

Motion to adjourn.

Motion: Tony Judge, 2nd Karen Walsh Pio

All in favor: Christine McKiernan – aye

Tony Judge – aye

Karen Walsh Pio - aye

Board of Health meeting adjourned: 7:53 p.m.

Summary	November 2022	December 2022	January 2023	February 2023	March 2023	April 2023	May 2023	June 2023	July 2023	August 2023	September 2023	October 2023	November 2023	December 2023	January 2024	February 2024	March 2024	April 2024	
Complaints Received																			
housing complaint	11	15	10	6	10	4	5	3	2	5	10	1	6	7	6	7	5	6	
food complaints/questions	2	5	6	1	3	5	5	4	2	0	5	4	4	2	5	5		1	
COVID inquiry/reporting	0	0	0	0		1	1	0	0	0	0	0							
animal control	3	2	3	3	3	4	5	3	3	2	5	0			2	3			
dumpster permit	2	0	0	0	2	0	0	5	2	2	0	0	1	4					
hauler permit	0	0	1	0	1	1	1	3	1	1	0	0							
septic permit	3	3	2	0	6	7	7	2	3	2	1	0		1	1	1			
property care complaint	2	1	0	2	2	1	1	5	4	5	3	1	3	3	1	2	1	1	
miscellaneous	7	8	4	3	3	6	6	0	0	0	0	0		1				1	
Total	30	34	26	15	30	29	31	25	17	17	24	6	14	18	15	18	6	9	
Notices Issued																			
housing orders	1	0	3	3	2	5	5	3	4	3	12	2	8	7	10	7	5	3	
condemnations	1	0	0	1	2	0	2	6	1	1		3	3				1	4	
property care notices	0	0	1	0	1	4	3	5	4	5	9	0	3	1	1	1	1	2	
compliance	1	0	5	2	4	1	0	4	2	2	2	2	5	1	1	4	4	1	
educational/best practice material	2	0	0	0	2	2	3	0	1	1	0	0	0	0					
dumpster violations	0	0	0	0	3	3	3	0	0	2	0	0	0	2					
Total	5	0	9	6	14	15	16	18	12	14	23	7	19	11	12	12	11	10	
Inspections Conducted																			
food inspections	0	0	7	9	13	17	14	3	2	3	6	1	4	2	2	9	10	5	
lodging/housing inspections	0	4	3	4	4	5	5	4	3	4	4	1	4	12	5	3	6	3	
site observations	0	0	0	2	4	5	7	2	1	1	2	0	8	2	3	5	14	1	
perc tests/septic installs									2	2	2	0	3	1	2	1	1	1	
Total	0	4	10	15	21	27	26	9	6	8	123	109	19	17	12	18	31	10	
Miscellaneous																			
records requests	18	9	1	1	2	3	1	1	2	1	3	3	1	2	9	5	9	4	
food plan reviews	1	2	2	1	1	1	2	2	0	0	0	0		1	1	1		1	
summer camp permits	0	0	0	1	1	3	2	0	2	0	0	2	9			2	5		
animal quarantines													3	3	6	8	1	2	
septic plan reviews															4	3	4	4	
title 5 reviews																	1	1	
pumping record reviews																			
Total	19	11	3	3	4	7	5	3	4	1	3	8	13	9	22	12	24	12	

REMOTE PARTICIPATION POLICY
TOWN OF SOUTH HADLEY

1. PURPOSE.

To enable members of all local public bodies in the Town of South Hadley (“Town Board(s)”) to remotely participate, in limited circumstances, in open meetings. All members of Town Boards should strive to attend meetings in person when possible. The intent of this policy is to establish guidelines on the practice of remote participation of all local public bodies under the Open Meeting Law, M.G.L. c. 30A, §§18-25.

2. AUTHORITY.

In accordance with 940 CMR 29.10(2)(a), the Selectboard, on February 21, 2023, voted to authorize remote participation by members of public bodies.

3. MINIMUM REQUIREMENTS FOR REMOTE PARTICIPATION.

No member of a Town Board shall remotely participate in a meeting unless the following requirements are met:

- (a) Member(s) of the Town Board who participate remotely and all persons present at the meeting location must be clearly audible to each other;
- (b) A quorum of the Town Board, including the chair or the person authorized to chair the meeting, must be physically present at the meeting location;
- (c) Members who participate remotely may vote and shall not be deemed absent.

4. PERMISSIBLE REASONS FOR REMOTE PARTICIPATION.

A member of a Town Board shall be permitted to participate remotely in a meeting if the member’s physical attendance would be unreasonably difficult.

5. TECHNOLOGY.

- (a) Use of only the following media is acceptable for remote participation. Accommodations shall be made for any Town Board member who requires TTY service, video relay service, or other form of adaptive telecommunications.
 - (i) Telephone, internet, or satellite-enabled audio or video conferencing;
 - (ii) Any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.
- (b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.
- (c) The Town Boards shall determine which of the acceptable methods above that its members may use.

- (d) If technical difficulties arise which inhibit the progress of the meeting, the chair or active chair shall elect which reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. Addressing the difficulties may include, but not be limited to, suspending discussion while the technical issues are addressed, discontinuing the participation of the member, or continuing discussion and terminating the connection with the remote participant.
- (e) The time of termination of the connection with the remote participant shall be noted in the meeting minutes.
- (f) The Selectboard shall determine the amount and source of payment for any costs associated with remote participation.

6. PROCEDURES FOR REMOTE PARTICIPATION.

- (a) Any member of a Town Board who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the person chairing the meeting of their desire to do so and the reason(s) for and facts supporting the request.
- (b) If the person chairing the meeting approves the request, the person requesting remote participation shall make all necessary technological arrangements to ensure that required equipment is available. If the necessary equipment is not available, the person chairing the meeting shall deny the request.
- (c) At the start of the meeting, the person chairing the meeting shall announce the name of the person participating remotely. This information shall be recorded into the meeting minutes.
- (d) All votes taken during any meeting in which a member participates remotely shall be taken by roll call vote.
- (e) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless the presence of the other person is approved by a simple majority vote of the public body.
- (f) When feasible, the person chairing the meeting shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that they reasonably anticipate will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, §22.
- (g) The member of a Town Board requesting to participate remotely shall be responsible for any out-of-pocket costs associated with such participation. The Town shall not be responsible for reimbursement of such costs.
- (h) Members participating remotely are reminded that the same obligations of consideration apply as in any physical meeting. Remote participants should direct their attention to the meeting and should make comments and decisions based upon information available to all other participants in the meeting.

7. DISTRIBUTION. This policy shall be distributed to all Town Boards who shall acknowledge receipt thereof.

REMOTE PARTICIPATION ADVISORY
BOARDS AND COMMISSIONS
TOWN OF SOUTH HADLEY

This advisory provides an overview of remote participation and the Open Meeting Law, G. L. c. 30A, §§ 18-25. A regulation promulgated by the Attorney General, 940 CMR 29.10 (the "Regulation"), allows the remote participation of board members and only after the chief executive officer of the municipality has authorized its use. The Town of South Hadley Selectboard voted to approve a Remote Participation Policy for ALL Boards on February 21, 2023.

The following methods of remote participation are allowed under the Regulation: telephone, internet, satellite enabled or video conferencing, or "any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another." If video conferencing is used, the remote participant must be visible to all persons present at the meeting. The primary focus of the Regulation is to ensure that all participants of the meeting, both physical and remote, can be heard by all others.

The Regulation allows each individual municipal body to determine which approved method of remote participation it will utilize during its meetings. The chair or acting chair of the meeting is responsible for determining how to handle any technical difficulties interfering with the remote participant's ability to hear and be heard. The chair is encouraged to suspend discussion at the meeting during any technical difficulties. In the event a remote participant is disconnected from the meeting, the chair or acting chair must note the time of the disconnection in the meeting minutes.

A board member may participate remotely only if a quorum of the board is physically present at the meeting, including the chair or acting chair, and the remote participant's physical attendance is "unreasonably difficult." Remote participation will be permitted at the chair of the board or the acting chair's discretion. We suggest that the chair or acting chair note on the record that he or she has determined that it is "unreasonably difficult" for the remote participant to be physically present at the meeting and therefore has permitted the remote participation.

The following mandatory procedures must be followed any time a municipal board member wishes to attend a meeting remotely:

- (a) Any member who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or acting chair of his or her desire to do so and the reason for and facts supporting his or her request.
- (b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes.
- (c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
- (d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless the presence of that person is approved by a simple majority vote of the public body.
- (e) When feasible, the chair or acting chair shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, § 22.

OPEN MEETING LAW

940 CMR 29.10

Remote Participation

- The Selectboard may authorize the use of remote participation at all future meetings of all municipal boards. Remote participation may not be utilized unless and until it is authorized by the Selectboard. 940 CMR 29.10(2).
- Minimum Requirements for remote participation: [940 CMR 29.10(4)]
 - Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other;
 - A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location; and
 - Members of public bodies who participate remotely may vote and shall not be deemed absent.
- Remote participation is allowed only when a board member's physical attendance is "unreasonably difficult." [940 CMR 29.10(5)]
- The following methods of remote participation are allowed: [940 CMR 29.10(6)]
 - Telephone, internet, satellite enabled or video conferencing, or
 - Any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

Each municipal board shall determine the method of remote participation permitted at its meetings.

- The following procedure must be followed when board members participate remotely:
 - Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.
 - At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes.
 - All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
 - A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless the presence of that person is approved by a simple majority vote of the public body.
 - When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with the Open Meeting Law.

OPEN MEETING LAW

CHECKLIST FOR CHAIRS AND BOARD AND COMMITTEE MEMBERS

- Meeting Notice must be posted at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays.
- In emergency situations, the 48 hour notice period may be waived however every effort should be made to update the Meeting Notice whenever possible.
- Notice must include the agenda for the meeting and any other matters that the Chair reasonably believes will be discussed at the meeting.
- Notice must be visible to the public “at all times.” This has been interpreted as meaning 24 hours a day, 7 days a week.
- The Chair must announce at the beginning of each meeting if the meeting is being tape recorded or video taped by either the Board/Committee or a member of the audience.
- All exhibits presented at the meeting are public records and they become part of the record for the hearing.
- Meeting minutes must reflect all actions taken by the Board/Committee.
- Meeting minutes must include a list of exhibits presented at the meeting.
- Executive Sessions may only be held in accordance with the exceptions found in the Law (see attached). The Chair must announce all subjects that may be revealed during the executive session and whether the Board/Commission will reconvene in public at the close of the executive session.
- Emails are likely to lead to deliberations outside of a public meeting. Emails should therefore be utilized only to distribute meeting materials and to convey logistical meeting information to the Board/Committee Members.

OPEN MEETING LAW

EXECUTIVE SESSION

A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

- (2) To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
- (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
- (4) To discuss the deployment of security personnel or devices, or strategies with respect thereto;
- (5) To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
- (6) To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
- (7) To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
- (8) To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

(9) To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

- i. any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
- ii. no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

(10) To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

REGULATION OF THE BELCHERTOWN BOARD OF HEALTH

PROHIBITING THE MANUFACTURING, SALE, AND DISTRIBUTION OF SYNTHETICALLY DERIVED CANNABINOIDS AND KRATOM

A. Statement of Purpose and Authority:

Whereas, hemp is defined as “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”¹

Whereas, tetrahydrocannabinol (THC) is the chemical responsible for most of marijuana’s psychological effects.²

Whereas, adult-use marijuana can be distinguished from hemp because it contains more than 0.3 percent (0.3%) delta-9 THC concentration, which is a naturally occurring cannabinoid.

Whereas, delta-8, delta-10, and other forms of THC are isomers of delta-9 and, except for trace amounts, are not found naturally in the plant cannabis, but are instead synthetically produced in laboratories.³

Whereas, in Massachusetts, adult-use marijuana is legal, but products containing delta-8, delta-10, and other synthetically derived cannabinoids are not.⁴

Whereas, delta-8 and similar synthetically derived products are psychoactive.⁵

Whereas, Kratom, a tree-like plant indigenous to Southeast Asia, produces stimulant and sedative effects when orally ingested in tablet, capsule, or extract form. Kratom leaves can be chewed or dried and ingested as a tea. Use of Kratom can lead to psychotic symptoms, and psychological and physiological dependence because it contains mitragynine and 7-hydroxymitragynine, two major psychoactive ingredients.⁶

Whereas, neither synthetic, hemp-derived products like delta-8 nor Kratom are regulated by the federal government or in Massachusetts.

¹ Implementation of Agricultural Improvement Act of 2018, 85 Fed. Reg. 51,640 (Aug. 21, 2020).

² Alina Bradford, *What is THC?*, LIVESCIENCE (May 18, 2017), [available at https://www.livescience.com/24553-what-is-thc.html](https://www.livescience.com/24553-what-is-thc.html).

³ Kristina Etter, *I Stand Corrected: The Truth About Delta-8 THC*, MEDIUM (March 17, 2021), [available at https://medium.com/seed-stem/i-stand-corrected-the-truth-about-delta-8-thc-e8085725ed9e](https://medium.com/seed-stem/i-stand-corrected-the-truth-about-delta-8-thc-e8085725ed9e).

⁴ MASS. DEPT. OF AGRIC. RES., HEMP IN MASSACHUSETTS: FAQs, [available at https://www.mass.gov/guides/hemp-in-massachusetts-faqs#-is-it-legal-to-manufacture-delta-8-thc-from-hemp?-\(last visited Feb. 13, 2023\)](https://www.mass.gov/guides/hemp-in-massachusetts-faqs#-is-it-legal-to-manufacture-delta-8-thc-from-hemp?-(last%20visited%20Feb.%2013,%202023)).

⁵ See U.S. FOOD & DRUG ADMIN., 5 THINGS TO KNOW ABOUT DELTA-8 TETRAHYDROCANNABINOL – DELTA-8 THC, [available at https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc](https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc) (last visited February 13, 2023).

⁶ DRUG ENFORCEMENT ADMIN., GET SMART ABOUT DRUGS, [available at http://www.getsmartaboutdrugs.gov](http://www.getsmartaboutdrugs.gov) (last visited February 13, 2023).

Whereas, the Massachusetts Supreme Judicial Court has held that “[t]he right to engage in business must yield to the paramount right of government to protect public health by any rational means.”⁷

Therefore, in furtherance of its mission to protect, promote, and preserve the health and well-being of its residents, and pursuant to the authority granted to the Belchertown Board of Health pursuant to G. L. c. 111, §31, the Board of Health enacts this Regulation Prohibiting the Manufacturing, Sale, and Distribution of Synthetically Derived Cannabinoids and Kratom.

B. Definitions:

For the purposes of this regulation, the following words shall have the following meanings:

Board of Health: The Belchertown Board of Health and its designated board of health agents.

Board of Health Agent: The Director of Public Health and any town employee designated by the board of health, which may include board of health and health department staff, law enforcement officers, and code enforcement officers.

Business Agent: An individual who has been designated by the owner or operator of any adult-use marijuana establishment to be the manager or otherwise in charge of said establishment.

Kratom: A tree-like plant indigenous to Southeast Asia.

Synthetically Derived Cannabinoid: Any cannabinoid that is altered by a chemical reaction that changes the molecular structure of any natural cannabinoid derived from the plant Cannabis to another cannabinoid found naturally in the plant Cannabis. Synthetically Derived Cannabinoids include but are not limited to delta-8 and delta-10.

Person: Any individual, firm, partnership, association, corporation, company, or organization of any kind, including, but not limited to an owner, operator, manager, proprietor, or person in charge of any establishment, business, cultivation property, or retail store.

C. Synthetically Derived Cannabinoids and Kratom Products:

1. No person shall manufacture, distribute, or sell Synthetically Derived Cannabinoids including, but not limited to delta-8 and delta-10 products or Kratom products in the Town of Belchertown.

D. Enforcement and Penalties:

1. Any person or entity charged with violating this regulation shall receive a notice of violation from the Belchertown Board of Health or its designated agent.
2. It shall be the responsibility of the establishment owner and/or his or her manager or business agent to ensure compliance with this regulation. In the case of a violation, the violator shall receive:
 - i. In the case of a first violation, a fine of one thousand dollars (\$1000.00);

⁷ Druzik v. Bd. of Health of Haverhill, 324 Mass. 129, 139 (1949) (citing Lawrence v. Bd. of Registration in Med., 239 Mass. 424, 428 (1921)).

- ii. In the case of a second violation within 36 months of a previous violation, a fine of two thousand dollars (\$2000.00), and a suspension of any permit issued by the Board, including but not limited to a permit to sell tobacco products, for seven (7) consecutive business days; or not limited;
 - iii. In the case of three or more violations within a 36-month period, a fine of five thousand dollars (\$5000.00), and a suspension of any permit issued by the Board, including but not limited to a permit to sell tobacco products, for thirty (30) consecutive business days.
3. Every day that a violation exists shall be deemed to be a separate offense. Separate but simultaneous violations shall be treated as separate violations. Multiple permit suspensions may not be served concurrently.
4. Any person who receives notice of a violation of this regulation may request a hearing before the Board. The request must be made in writing and filed within seven (7) days of the date the violation was received.
5. The authority to inspect establishments for compliance and to enforce this regulation shall be held by the Belchertown Board of Health and its designees and the Belchertown Police Department.
6. Any person may register a complaint pursuant to this regulation to initiate an investigation and enforcement with the Belchertown Board of Health and its designees.
7. Upon accrual of four (4) violations of this regulation within a thirty-six (36) month period, or upon the commission of two (2) or more egregious violations of this regulation within thirty-six (36) months as determined by the Board, the Board may issue a notice of intent to revoke and shall hold a hearing in accordance with this regulations and, after such hearing, may permanently revoke any permits held by the violator, including any permits to sell tobacco products in Belchertown.
8. Before suspending or revoking any permit issued by the Board, including a permit to sell tobacco products, the Board shall provide notice of the intent to suspend or revoke such permit, which notice shall contain the reasons therefor and shall establish a time and date for a hearing, to be held no earlier than seven (7) days from the date of the notice. The permit holder or their designee shall have the opportunity to be heard and shall be notified of the Board's decision and the reasons therefore in writing. If after hearing, the Board finds that a violation of this regulation occurred, the Board shall suspend or revoke the subject permit. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings concerning the same offense. Upon suspension or revocation of a permit, all permitted products must be removed from the retail establishment. Failure to remove such products shall constitute a separate violation of this regulation.
9. Failure to comply with the terms of a permit suspension imposed pursuant to this regulation may subject the permit holder to an additional suspension of all Board-issued permits for thirty (30) consecutive business days.

E. Severability:

If any provision of this regulation is declared invalid or unenforceable, all other provisions shall not be affected thereby but shall be in full force and effect.

F. Effective Date:

This regulation shall take effect on _____.

Dated: _____

REGULATION OF THE SOUTH HADLEY BOARD OF HEALTH

PROHIBITING THE MANUFACTURING, SALE, AND DISTRIBUTION OF SYNTHETICALLY DERIVED CANNABINOIDS AND KRATOM

A. Statement of Purpose and Authority:

Whereas, hemp is defined as “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”¹

Whereas, tetrahydrocannabinol (THC) is the chemical responsible for most of marijuana’s psychological effects.²

Whereas, adult-use marijuana can be distinguished from hemp because it contains more than 0.3 percent (0.3%) delta-9 THC concentration, which is a naturally occurring cannabinoid.

Whereas, delta-8, delta-10, and other forms of THC are isomers of delta-9 and, except for trace amounts, are not found naturally in the plant cannabis, but are instead synthetically produced in laboratories.³

Whereas, in Massachusetts, adult-use marijuana is legal, but products containing delta-8, delta-10, and other synthetically derived cannabinoids are not.⁴

Whereas, delta-8 and similar synthetically derived products are psychoactive.⁵

Whereas, Kratom, a tree-like plant indigenous to Southeast Asia, produces stimulant and sedative effects when orally ingested in tablet, capsule, or extract form. Kratom leaves can be chewed or dried and ingested as a tea. Use of Kratom can lead to psychotic symptoms, and psychological and physiological dependence because it contains mitragynine and 7-hydroxymitragynine, two major psychoactive ingredients.⁶

Whereas, neither synthetic, hemp-derived products like delta-8 nor Kratom are regulated by the federal government or in Massachusetts.

¹ Implementation of Agricultural Improvement Act of 2018, 85 Fed. Reg. 51,640 (Aug. 21, 2020).

² Alina Bradford, *What is THC?*, LIVESCIENCE (May 18, 2017), [available at https://www.livescience.com/24553-what-is-thc.html](https://www.livescience.com/24553-what-is-thc.html).

³ Kristina Etter, *I Stand Corrected: The Truth About Delta-8 THC*, MEDIUM (March 17, 2021), [available at https://medium.com/seed-stem/i-stand-corrected-the-truth-about-delta-8-thc-e8085725ed9e](https://medium.com/seed-stem/i-stand-corrected-the-truth-about-delta-8-thc-e8085725ed9e).

⁴ MASS. DEPT. OF AGRIC. RES., HEMP IN MASSACHUSETTS: FAQs, [available at https://www.mass.gov/guides/hemp-in-massachusetts-faqs#is-it-legal-to-manufacture-delta-8-thc-from-hemp?-\(last visited Feb. 13, 2023\)](https://www.mass.gov/guides/hemp-in-massachusetts-faqs#is-it-legal-to-manufacture-delta-8-thc-from-hemp?-(last%20visited%20Feb.%2013,%202023)).

⁵ See U.S. FOOD & DRUG ADMIN., 5 THINGS TO KNOW ABOUT DELTA-8 TETRAHYDROCANNABINOL – DELTA-8 THC, [available at https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc](https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc) (last visited February 13, 2023).

⁶ DRUG ENFORCEMENT ADMIN., GET SMART ABOUT DRUGS, [available at http://www.getsmartaboutdrugs.gov](http://www.getsmartaboutdrugs.gov) (last visited February 13, 2023).

Whereas, the Massachusetts Supreme Judicial Court has held that “[t]he right to engage in business must yield to the paramount right of government to protect public health by any rational means.”⁷

Therefore, in furtherance of its mission to protect, promote, and preserve the health and well-being of its residents, and pursuant to the authority granted to the South Hadley Board of Health pursuant to G. L. c. 111, §31, the Board of Health enacts this Regulation Prohibiting the Manufacturing, Sale, and Distribution of Synthetically Derived Cannabinoids and Kratom.

B. Definitions:

For the purposes of this regulation, the following words shall have the following meanings:

Board of Health: The South Hadley Board of Health and its designated board of health agent(s).

Board of Health Agent: The Director of Public Health and any town employee designated by the board of health, which may include but not limited to, South Hadley Health Department staff, law enforcement officers, and code enforcement officers.

Business Agent: An individual who has been designated by the owner or operator of any adult-use marijuana establishment to be the manager or otherwise in charge of said establishment.

Kratom: A tree-like plant indigenous to Southeast Asia.

Synthetically Derived Cannabinoid: Any cannabinoid that is altered by a chemical reaction that changes the molecular structure of any natural cannabinoid derived from the plant Cannabis to another cannabinoid found naturally in the plant Cannabis. Synthetically Derived Cannabinoids include but are not limited to delta-8 and delta-10.

Person: Any individual, firm, partnership, association, corporation, company, or organization of any kind, including, but not limited to an owner, operator, manager, proprietor, or person in charge of any establishment, business, cultivation property, or retail store.

C. Synthetically Derived Cannabinoids and Kratom Products:

1. No person shall manufacture, distribute, or sell Synthetically Derived Cannabinoids including, but not limited to delta-8 and delta-10 products or Kratom products in the Town of South Hadley.

D. Enforcement and Penalties:

1. Any person or entity charged with violating this regulation shall receive a notice of violation from the South Hadley Board of Health or its designated agent(s).
2. It shall be the responsibility of the establishment owner and/or his or her manager or business agent to ensure compliance with this regulation. In the case of a violation, the violator shall receive:
 - i. In the case of a first violation, a fine of one thousand dollars (\$1000.00);

⁷ Druzik v. Bd. of Health of Haverhill, 324 Mass. 129, 139 (1949) (citing Lawrence v. Bd. of Registration in Med., 239 Mass. 424, 428 (1921)).

- ii. In the case of a second violation within 36 months of a previous violation, a fine of two thousand dollars (\$2000.00), and a suspension of any permit issued by the Board, including but not limited to a permit to sell tobacco products, for seven (7) consecutive business days; or not limited;
 - iii. In the case of three or more violations within a 36-month period, a fine of five thousand dollars (\$5000.00), and a suspension of any permit issued by the Board, including but not limited to a permit to sell tobacco products, for thirty (30) consecutive business days.
3. Every day that a violation exists shall be deemed to be a separate offense. Separate but simultaneous violations shall be treated as separate violations. Multiple permit suspensions may not be served concurrently.
4. Any person who receives notice of a violation of this regulation may request a hearing before the Board. The request must be made in writing and filed within seven (7) days of the date the violation was received.
5. The authority to inspect establishments for compliance and to enforce this regulation shall be held by the South Hadley Board of Health and its designee(s) and the South Hadley Police Department.
6. Any person may register a complaint pursuant to this regulation to initiate an investigation and enforcement with the South Hadley Board of Health and its designee(s).
7. Upon accrual of four (4) violations of this regulation within a thirty-six (36) month period, or upon the commission of two (2) or more egregious violations of this regulation within thirty-six (36) months as determined by the Board, the Board may issue a notice of intent to revoke and shall hold a hearing in accordance with this regulations and, after such hearing, may permanently revoke any permits held by the violator, including any permits to sell tobacco products in South Hadley.
8. Before suspending or revoking any permit issued by the Board, including a permit to sell tobacco products, the Board shall provide notice of the intent to suspend or revoke such permit, which notice shall contain the reasons therefor and shall establish a time and date for a hearing, to be held no earlier than seven (7) days from the date of the notice. The permit holder or their designee shall have the opportunity to be heard and shall be notified of the Board's decision and the reasons therefore in writing. If after hearing, the Board finds that a violation of this regulation occurred, the Board shall suspend or revoke the subject permit. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings concerning the same offense. Upon suspension or revocation of a permit, all permitted products must be removed from the retail establishment. Failure to remove such products shall constitute a separate violation of this regulation.
9. Failure to comply with the terms of a permit suspension imposed pursuant to this regulation may subject the permit holder to an additional suspension of all Board-issued permits for thirty (30) consecutive business days.

E. Severability:

If any provision of this regulation is declared invalid or unenforceable, all other provisions shall not be affected thereby but shall be in full force and effect.

F. Effective Date:

This regulation shall take effect on _____.

Dated: _____

DRAFT

Town of South Hadley, MA
Friday, April 5, 2024

Chapter 175. Marijuana

[HISTORY: Adopted by the Town Meeting of the Town of South Hadley as indicated in article histories. Amendments noted where applicable.]

Article I. Licensed and Other Related Establishments

[Adopted 1-10-2018 STM by Art. 6^[1]]

[1] *Editor's Note: This article required submission of the question to the Town at a Town Election. The question passed at the April 2018 Annual Town Election.*

§ 175-1. Establishment of ban.

The Town, consistent with MGL c. 94G, § 3(a)(2), bans all types of marijuana establishments as defined in MGL c. 94G, § 1(j), including commercial cultivation, retail sales, testing, manufacturing, packaging, distribution or any other type of licensed cannabis/marijuana related businesses.

§ 255-49. Recreational marijuana. [Added 1-10-2018 STM by Art. 5]

- A. Purpose. The purpose of this section is to provide standards for the placement and operation of facilities and establishments associated with the cultivation, production, and sale of marijuana and accessory products by marijuana establishments as permitted in Chapter 255, Attachment 1, Use Regulations Schedule, that address public safety and health and minimize impacts on nearby residential uses.
- B. Applicability. This section applies to all specified marijuana establishments, as permitted in Chapter 255, Attachment 1, Use Regulations Schedule, proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these establishments or related equipment.
- C. Prohibited locations.
 - (1) The building(s) in which a marijuana establishment are permitted shall not be located:
 - (a) Within 300 feet of any building:
 - [1] Containing another marijuana establishment except that a marijuana retailer may be located within the same building as a marijuana product manufacturer which is providing some or all of the product for the retailer; or
 - [2] In which is located 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] Housing a public library; or
 - [5] Any residential use; or
 - (b) Within a building containing residential units, including transient housing or group housing such as hotels, motels, lodging houses, or dormitories.
 - (2) The property which is proposed to be permitted for a marijuana establishment, at the time the application is received by the Planning Board, shall not be located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12. If the parcel of land on which a proposed marijuana establishment is to be located is developed with one or more buildings occupied by more than one tenant, then the Planning Board shall interpret "property which to proposed to be permitted" to shall mean only the portion of the building or property which is actually proposed to be used by the marijuana establishment.
- D. Maximum number of marijuana retail establishments. There shall be no more than three marijuana retailers licensed to operate or operating in the Town of South Hadley. In the event applications for multiple retail establishments are submitted which, if approved, would result in more than three such establishments being located in South Hadley, the Planning Board

shall delay a decision on any application which would result in more than three such establishments until the appeal period for the third establishment has lapsed.

E. Marijuana retailer hours of operation. Marijuana establishments engaged in the retail sale of marijuana shall be limited in their hours of operation as follows:

- (1) Monday through Saturday from 8:00 a.m. to 11:00 p.m.
- (2) Sunday from 10:00 a.m. to 11:00 p.m.

However, the Planning Board may limit the hours more restrictively if the Board finds that retail establishments in the immediate area engaged in the sale of off-premises consumed alcohol and/or cigarettes operate more restrictively than specified above.

F. Physical requirements.

- (1) All aspects of the use/facility relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, 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 business.
- (2) No outside storage is permitted. This prohibition applies to all aspects of the product and waste associated with the marijuana establishment.
- (3) Ventilation. All marijuana establishments 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.
 - (b) Odor from marijuana cannot be detected by a person with a normal sense of smell at the exterior of the medical marijuana business or at any adjoining use or property.
 - (c) Signage shall conform to § 255-85 of the South Hadley Zoning Bylaw and requirements of state laws and regulations governing such facilities.

G. Special application requirements. Above and beyond the standard application requirements for special permits, an application for a use under this section shall include the following:

- (1) The name and address of each owner of the facility/operation;
- (2) Copies of all required registrations issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the facility;
- (3) Evidence that the applicant has site control and the right to use the site for a facility in 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) A notarized statement signed by the organization's Chief Executive Officer and corporate attorney disclosing all of its designated representatives, including officers and directors, shareholders, partners, members, managers, directors, officers, or other

similarly situated individuals and entities and their addresses. If any of the above are entities rather than persons, the applicant must disclose the identity of all such responsible individual persons;

- (5) In addition to what is normally required in a site plan and/or special permit application under Article IX and Article XII of the South Hadley Zoning Bylaw, respectively, details showing all exterior proposed security measures for the premises, including lighting, fencing, gates and alarms, etc., ensuring the safety of employees and patrons and to protect the premises from theft or other criminal activity [however, this should not be at the same detail as the Security Plan to be submitted to the Chief of Police under Subsection G(7) below].
 - (6) A management plan (inclusive of the operations maintenance plan) as required under the special permit rules and regulations, including a description of all activities to occur on site, including all provisions for the delivery of marijuana products to and/or from the site as well as the disposal of waste material.
 - (a) Modifications. Any changes to the plans approved by the Planning Board shall be submitted to the Town Planner/Planning Director for determination if further Planning Board review is warranted prior to issuance of the building permit. If further Planning Board review is deemed warranted, such further review and approval by the Planning Board shall be obtained prior to issuance of the building permit.
 - (b) Updating. Project proponent shall be responsible for updating the operations and maintenance plan a) whenever personnel with responsibilities identified in the plan change and b) no less than every five years.
 - (7) Demonstration that the facility's security plan has been approved by the Police Chief. This plan must detail all exterior and interior proposed security measures for the premises, including but not limit to: video monitoring and recording, lighting, fencing, and alarms ensuring the safety of employees and to protect the premises from theft or other criminal activity. This plan must provide twenty-four-hour security and monitoring for the facility, particularly, those portions of the building which are deemed by the Police Chief to be most vulnerable to unauthorized entry and least visible from the public ways.
 - (8) A waste disposal plan which provides details for disposal of the waste materials in accordance with applicable local and state laws and regulations.
- H. Deferred application review and decision. In the event that Town Meeting votes to enact a ban on any of the five types of establishments regulated in part by § 255-49, (craft marijuana cultivator cooperative, marijuana cultivator, marijuana product manufacturer, marijuana testing facility, and/or marijuana retailer) the sixty-five-day time period for holding a public hearing under §§ 255-128 and 255-147 of the Zoning Bylaw shall not commence until such time as the vote on the ballot question is certified by the Town. Further, the Planning Board shall not render any decision on an application for such use(s) unless and until the ballot question vote is certified. If such a ban passes Town Meeting and a subsequent ballot question vote, the Planning Board shall deny any application for such an establishment.