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**REGULATION OF THE TOWN OF MANCHESTER-BY-THE-SEA BOARD OF HEALTH
PROHIBITING THE MANUFACTURE, SALE, OR DISTRIBUTION OF
SYNTHETIC CANNABINOIDS**

A. Statement of Purpose and Authority:

Whereas, delta-9-tetrahydrocannabinol (THC) is the chemical responsible for most of marijuana's psychological effects.¹

Whereas, hemp is defined as "the plant of the genus *Cannabis* and any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis or per volume or weight of marijuana product or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinol acid in any part of the plant of the genus *Cannabis* regardless of moisture content."²

Whereas, marijuana is defined as "all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including tetrahydrocannabinol as defined in section 1 of chapter 94C" of the Massachusetts General Laws; "provided, however, that 'marijuana' shall not include . . . (ii) hemp."³

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.⁴

Whereas, the production of synthetic, hemp-derived products like delta-8 is not regulated by the federal government or in Massachusetts because the manufacture, sale or distribution of such products is not permitted under state or federal law; these products are schedule 1 controlled substances pursuant to the Controlled Substances Act.⁵

Whereas, synthetically produced THC products have not been evaluated or approved by the FDA for safe use in any context because there is variability in manufacturing processes, product labeling and amounts of THC concentrations, in addition to reports of hallucinations, vomiting, tremor, dizziness, anxiety and confusion.⁶

¹ Alina Bradford, *What is THC?*, LIVESCIENCE (May 18, 2017), available at <https://www.livescience.com/24553-what-is-thc.html>.

² G.L. c. 94C, §1.

³ G.L. c. 94C, §1.

⁴ 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>.

⁵ <https://www.fda.gov/news-events/press-announcements/fda-issues-warning-letters-companies-illegally-selling-cbd-and-delta-8-thc-products>; [https://www.dea.gov/drug-information/csa#:~:text=The%20Controlled%20Substances%20Act%20\(CSA,and%20safety%20or%20dependence%20liability](https://www.dea.gov/drug-information/csa#:~:text=The%20Controlled%20Substances%20Act%20(CSA,and%20safety%20or%20dependence%20liability).

⁶ [https://www.dea.gov/drug-information/csa#:~:text=The%20Controlled%20Substances%20Act%20\(CSA,and%20safety%20or%20dependence%20liability](https://www.dea.gov/drug-information/csa#:~:text=The%20Controlled%20Substances%20Act%20(CSA,and%20safety%20or%20dependence%20liability).

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 Town of Manchester-by-the-Sea Board of Health pursuant to G. L. c. 111, §31, the Board of Health enacts this Regulation Prohibiting the Manufacturing, Sale, and Distribution of Synthetic Cannabinoids.

B. Definitions:

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

Board: The Town of Manchester-by-the-Sea Board of Health.

Designated Agent of the Board of Health: the Director of Public Health and any person or entity, including health department staff, law enforcement officers, and designated agent of the Board to carry out the provisions of this regulation.

Business Day: Any day of the week, inclusive of Saturday and Sunday, during which a retail establishment is open.

Permit Holder: Any person or business who applies for and receives a permit issued by the Board of Health, or his or her business agent.

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 or retail store.

Synthetic Cannabinoid: Any cannabinoid that is altered or created by a chemical reaction. Synthetic Cannabinoids include but are not limited to delta-8 and delta-10.

C. Products Containing Synthetic Cannabinoids:

It shall be a violation of this regulation for any Permit Holder to manufacture, distribute, or sell, or cause to be manufactured, distributed or sold, in the Town of Manchester-by-the-Sea any product containing a Synthetic Cannabinoid including, but not limited to delta-8 and delta-10.

D. Enforcement and Penalties:

1. Any Permit Holder found in violation of this regulation shall receive a notice of violation from the Board or the Board’s designated agent.
2. Any violation of this regulation shall be punishable by:
 - i. a fine of one thousand dollars (\$1000.00) in the case of a first violation;

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. a fine of two thousand dollars (\$2000.00) in the case of a second violation within 36 months of a previous violation, 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
 - iii. a fine of five thousand dollars (\$5000.00) in the case of a third or subsequent violation within a thirty-six (36) month period, 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 notice was received.
5. 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 regulation and, after such hearing, may permanently revoke any permits held by the violator, including any permits to sell tobacco products in The Town of Manchester-by-the-Sea.
6. 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.
7. 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.
8. Complaints and Investigations.
 - i. The authority to inspect retail establishments operating in Manchester-by-the-Sea for compliance and to enforce this regulation shall be held by the Board and its designated agents.

- ii. Any person may register a complaint with the Board or its designated agents to initiate an investigation and enforcement of this regulation by the Board.
 - iii. Refusal by a permit holder or the employee of a permit holder to cooperate with an inspection or investigation pursuant to this regulation shall result in the suspension of any Board-issued permit for thirty (30) consecutive business days.
9. The Board may enforce these regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board shall not preclude enforcement through any other lawful means.
10. The fines and penalties established herein shall not limit the Board's ability to suspend or permanently revoke a permit when, in the discretion of the Board, the circumstances or events underlying any violation warrant such suspension or revocation.

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.

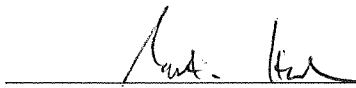
F. Effective Date:

This regulation shall take effect on November 1, 2024.

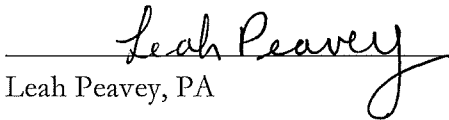
Board of Health Members



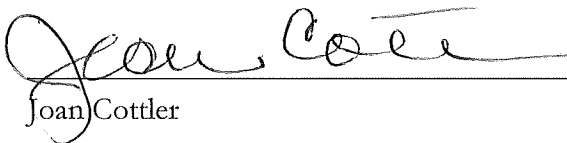
Peter Colarusso, Chair



Martin Hahn, MD



Leah Peavey, PA



Joan Cottler