

MIDDLEBOROUGH BOARD of HEALTH

**Regulation of Synthetic Marijuana  
and Similar Cannabimimetics**

Effective October, 2013

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ARTICLE I. PURPOSE & SCOPE

**WHEREAS**, the Board of Health in Middleborough wishes to avoid all situations which may pose an imminent health hazard or the health and safety of the public may be at risk in any food-related operations and establishments it may license, and;

- Conclusive evidence exists that synthetic marijuana, synthetic cannabinoids, synthetic stimulants and synthetic psychedelic/hallucinogens have been linked to serious physical effects resulting in hospitalization and death when ingested, inhaled or otherwise introduced to the human body, and;
- Synthetic marijuana and similar cannabimimetic products pose an imminent health hazard for the residents of North Attleborough and the general public, and;
- The marketing and sale of such synthetic products to school age children poses a particularly egregious threat to the general public health.

**NOW THEREFORE**, this Board of Health adopts the following regulation under the authority specified in ARTICLE II herein in order to regulate access to synthetic marijuana and similar cannabimimetic agents and products in food-related operations and establishments in the Town of North Attleborough.

## ARTICLE II. AUTHORITY

A. This regulation is promulgated pursuant to the authority granted to the Middleborough Board of Health by Massachusetts General Laws Chapter 111, Section 31 that the Board “may make reasonable health regulations” to protect the public health of this community.

B. Pursuant to the Federal 1999 Food Code and the Massachusetts 2011 Merged Food Code 105 CMR 590.000, as amended from time to time, if an inspection does not comply with 105 CMR 590.000, the Board of Health or its agent shall make a determination whether any of the violations create an imminent health hazard and/or “are sufficiently serious to require revocation.”

## ARTICLE III. DEFINITIONS:

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

Applicant: Any person who applies to the Board of Health for a license to maintain and operate a food establishment or operation within the Town of Middleborough.

Board of Health or Board: The Middleborough Board of Health, including its officers, assigns and agents.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be its manager or otherwise the person in charge (PIC) of said establishment.

Cannabimimetics: A group of substances that include synthetic marijuana, synthetic cannabinoids, synthetic stimulants, synthetic psychedelics, synthetic hallucinogens and other similar products that induce the symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction or dulling of the senses or nervous system, distortion of audio, visual or mental processes similar to a controlled substance or imitation controlled substance, and;

A. Any substance that is a cannabinoid receptor type 1 (CB 1 receptor) as demonstrated by binding studies and functional assays within the following structural classes:

1. 2-(3-hydroxycyclohexyl) phenol with substitution at the 5-position of the penolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent;
2. 3-(1-naphthoyl) indole or 3-(1-naphthyl) indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent;
3. 3-(1-naphthoyl) pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the indole ring to any extent, and whether or not substituted on the naphthoyl ring to any extent;
4. 1-(1-naphthylmethyl) indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, and whether or not substituted on the naphthyl ring to any extent; or

*Definitions – Continued*

5. 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, and whether or not substituted on the phenyl ring to any extent.

B. Any substance which includes one (1) or more of any of the following chemicals:

1. CP 47,497; 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
2. Cannabicyclohexanol; 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
3. JWH-015; (2methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone;
4. JWH-018; 1-pentyl-3-(1-naphthoyl) indole;
5. JWH-019; 1-hexyl-3-(1-naphthoyl) indole;
6. JWH-073; 1-butyl-3-(1-naphthoyl) indole;
7. JWH-081; 1-pentyl-3-(1-4-methoxynaphthoyl) indole;
8. JWH-122; 1-pentyl-3-(4-methyl-1-naphthoyl) indole;
9. JWH-200; 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole;
10. JWH-203; 1-pentyl-3-(2-chlorophenylacetyl) indole;
11. JWH-250; 1-pentyl-3-(2-methoxyphenylacetyl) indole;
12. JWH-398; 1-pentyl-3-(4-chloro-1-naphthoyl)indole;
13. AM2201; 1-(5-fluoropentyl)-3-(1-naphthoyl) indole;
14. AM694; 1-(5-fluoropentyl)-3-(2-iodobenzoyl) indole;
15. SR-19 and RCS-4; 1-pentyl-3-(4-methoxy-benzoyl) indole; and
16. SR-18 and RCS-8; 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl) indole.

C. Any substance which includes one (1) or more of any of the following chemicals:

1. 2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E);
2. 2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D);
3. 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-C);
4. 2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C-I);
5. 2-[4-(Ethylthio)-2,5-dimethoxyphenyl] ethanamine (2C-T-2);
6. 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl] ethanamine (2C-T-4);
7. 2-(2,5-Dimethoxyphenyl) ethanamine (2C-H);
8. 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine(2C-N); and
9. 2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P)

D. Any illegal chemical product which includes one (1) or more of any of the following chemicals:

1. 3,4 – methylenedioxy methcathinone, MDMC;
2. Medphradone (4-methylmethcathinone);
3. 4 – methylmethcathinone, 4 – MMC;
4. 4 – methoxymethcathinone, bk – PMMA, PMMC;
5. 3, 4 – fluoromethcathinone, FMC;
6. Naphthylpyrovalerone, NRG -1;
7. Beta-keto-N-methylbenzodioxolylpropylamine;
8. 2-(methylamino)-propiofenone; *or* alpha-(methylamino) propiofenone;
9. 3-methoxymethcathinone;

*Definitions – Continued*

10. 2-(methylamino)-1-phenylpropan-1-one;
11. 4-ethylmethcathinone;
12. 3,4-dimethylmethcathinone;
13. Alpha-Pyrrolidinopentiophenone;
14. Beto-Keto-Ethylbenzodioxolybutanamine;
15. 3,4-methylenedioxy-N-ethylcathinone;
16. 4-methyl-alpha-pyrrolidinobutyrophenone;
17. Methylenedioxypropylone or [(MDPV) (1-(1,3-Benzodioxol-5-yl)-2-(1-pyrrolidinyl)-1-pentanone)]; and
18. MDAI; 5, 6-methylenedioxy-2-aminoindane.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals, including the Town of Middleboro or any agency thereof, which uses the services of one (1) or more employees.

Food: Any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

Food Establishment or Establishment: Any operation that stores, prepares, packages, serves, vends or otherwise provides Food for human consumption, including any element of the operation such as a transportation vehicle or satellite feeding location.

Inspection: Any official examination, observation, survey or monitoring by the Board to determine compliance with the rules, regulations, orders, requirements or conditions of the Board and/or the Massachusetts Department of Public Health.

Minor: Any individual who is under the age of eighteen (18).

Permit: A Food Service, Retail Food, Mobile Food, Bakery, Catering, Frozen Dessert, Ice Cream, Temporary Food or any similar license granted by the Board of Health to operate a Food Establishment.

Permit Holder: Any person engaged in the sale or distribution of Food products directly to consumers who applies for and receives an operating license from the Board, or any person who is required to apply for a Permit pursuant to this regulation, or his or her Business Agent.

Person: An individual, Employer, employee, Permit Holder, Establishment manager or owner, or the owner or operator of any Food operation or Establishment engaged in the sale or distribution of Food products directly to consumers.

Synthetic Marijuana: Any chemically processed or infused animal or vegetable matter that can artificially mimic the effects of the cannabis sativa L plant when consumed.

Town: The Town of Middleborough and its authorized agents.

#### ARTICLE IV. SALES AND DISTRIBUTION

- A. No Person shall sell, give, display for sale, deliver or otherwise distribute Synthetic Marijuana or similar Cannabimimetics to a Minor under any circumstances.
- B. No Person shall sell, give, display for sale, deliver or otherwise distribute Synthetic Marijuana or similar Cannabimimetics in an Establishment licensed by the Board to provide Food products within the Town.
- C. No Permit Holder shall sell, give, display for sale, deliver or otherwise distribute Synthetic Marijuana or similar Cannabimimetics in a Food facility, Establishment or other retail operation licensed by the Board.
- D. As part of the Food product Permit application process, Applicants will be provided with this regulation and be required to sign a statement declaring that he or she has read this regulation and will be responsible for instructing any and all employees who may be responsible for Food product sales or distribution regarding any applicable state laws regarding the sale of Synthetic Marijuana or similar Cannabimimetics and this regulation.
- E. Permits shall be displayed at the licensed Establishment or operation in a conspicuous place.
- F. Permits shall not be renewed if the Permit Holder has failed to pay all fines issued and the time period to appeal the fines has expired.

#### ARTICLE V. DISTRIBUTION & SAMPLING PROHIBITED

No Person shall distribute, or cause to be distributed, any samples of Synthetic Marijuana or similar Cannabimimetics and no Person shall allow any sampling of Synthetic Marijuana or similar Cannabimimetics at a Food Establishment or operation licensed by the Board.

#### ARTICLE VI. INSPECTIONS

- A. The Health Department shall regularly inspect without limitation the Food Establishments and operations within the Town.
- B. The Board, its employees, assigns and agents, including any law enforcement officer acting in an official capacity, shall have access at all reasonable times to any Food Establishment or operation within the Town for the purpose of inspecting said Food Establishment or operation.

#### ARTICLE VII. EMBARGO OF CANNABIMIMETICS

A. Based upon inspection, whenever the Board shall find or have probable cause to believe that Synthetic Marijuana or similar Cannabimimetics are available for sale, delivery or distribution in a Food facility, Establishment or other Food-related operation licensed by the Board, it shall affix or cause to be affixed in plain sight a tag, notice or other appropriate marking to the product(s) and to one or more points of sale at or within the Food facility, Establishment or other retail operation giving notice that such product(s) is/are suspected of being Synthetic Marijuana

*Embargo of Cannabimimetics – Continued*

or similar Cannabimimetics and that the product(s) is/are being embargoed by the Board for a period of fifteen (15) business days. In addition, said tag, notice or other appropriate marking shall warn all Persons not to remove or dispose of the product(s) by sale or otherwise until written permission for removal or disposal is given by the Board, provided however that such product(s) may be removed from public display at the discretion of the Permit Holder but shall not be removed from the immediate premises.

B. When such embargoed product(s) has/have been qualified as Synthetic Marijuana or similar Cannabimimetics as provided herein by certified laboratory testing, the Board will file a petition with District Court for a libel of condemnation of the product(s). If the Board finds that the product(s) embargoed is/are not Synthetic Marijuana or any similar Cannabimimetics, the Board shall remove its tags, notices or other markings, thereby permitting the release of the subject product(s).

C. If the Board shall find that such embargoed product(s) is/are qualified as Synthetic Marijuana or similar Cannabimimetics by certified laboratory testing, such product(s) shall be destroyed after entry of the Court decree at the expense of the Permit Holder and under the supervision of the Board.

D. If the Board finds that embargoed product(s) suspected of being Synthetic Marijuana or any similar Cannabimimetics as provided herein, has/have been removed or disposed of without specific written permission for such removal or disposal from the Board, the Permit Holder shall be penalized as provided herein as if the product(s) had been qualified as Synthetic Marijuana or similar Cannabimimetics by certified laboratory testing.

**ARTICLE VIII. VIOLATIONS**

A. It shall be the responsibility of the Permit Holder, or his/her operator or Business Agent, to ensure compliance with this regulation pertaining to the sale, distribution, delivery and/or sampling of Synthetic Marijuana or similar Cannabimimetics.

**ARTICLE IX. PENALTIES**

A. Permit Holders who violate this regulation shall incur a fine of **\$300.00** and **REVOCAION** of his/her Permit(s) to operate the Food Establishment or operation where Synthetic Marijuana or similar Cannabimimetics have been found to be given away, offered for sale, displayed for sale, delivered or otherwise distributed. Said revocation shall be for a minimum period of xxxx from the date of the Board's finding, without exception.

B. In addition to the penalties set forth above, any Permit Holder whom the Board determines has engaged in the sale or distribution of Synthetic Marijuana or similar Cannabimimetics at a second Food Establishment or operation licensed by the Board while his/her Permit is revoked in another Food Establishment or operation shall be subject to revocation of ALL of his/her Permits within the Town for xxxx from the date of the second violation.

*Penalties – Continued*

C. Each calendar day on which a violation occurs shall be considered a separate offense.

ARTICLE X. GROUND FOR REVOCATION OR REFUSAL TO RENEW A PERMIT

A. Pursuant to 105 CMR 590.014(C)(1), certain grounds by themselves, shall constitute full and adequate grounds for revocation or refusal to renew a License of Permit issued by the Board, including, but not limited to:

1. Any actions sufficiently serious to indicate that, in the sole discretion of the Board, an imminent health hazard exists or the health or safety of the public is at risk;
2. Failure to comply with this regulation;
3. Failure to allow agents of the Board to conduct inspections;
4. Attempts to obstruct, evade or impede the work of duly authorized agents of the Board;
5. Continuing to conduct Food-related operations when the Permit to do so is revoked, and;
6. Such other just and sufficient cause(s) as the Board may determine would render the Permit Holder unfit to continue providing Food-related services in the Town.

ARTICLE XI. REVOCATION OF A PERMIT

A. If the Board finds that a Food Establishment or operation has given away, offered to sell, displayed for sale, delivered or otherwise distributed Synthetic Marijuana or similar Cannabimimetics, it shall provide the Permit Holder with notice of its intent to revoke its Permit(s) consistent with 105 CMR 590.015(B) and this regulation.

B. A Permit Holder so notified of the Board's intention to revoke or refuse to renew a License or Permit shall have ten (10) business days after receipt of such written notice in which to request a hearing.

C. If the Board, after the hearing and in its sole discretion, shall determine that a License or Permit shall be revoked or not renewed pursuant to 105 CMR 590.014(B)(1)(b) through (h) and this regulation, the Board shall issue a written decision within twenty (20) business days which contains a summary of the testimony and evidence considered and the reasons for the decision.

D. If a Permit Holder fails to request a hearing within the ten (10) business days following receipt of the Board's notice of intent to revoke its License(s) or Permit(s), the Board may impose its revocation order.

ARTICLE XII. RELIEF

Any Permit Holder aggrieved by the final decision of the Board to revoke one or more Licenses or Permits pursuant to 105 CMR 590.015(B) and this regulation may seek relief in a court of competent jurisdiction in the Commonwealth within twenty (20) business days of the receipt of said final decision.

ARTICLE XIII. ENFORCEMENT

The provisions of this regulation shall be enforced by the Board and its employees, assigns and agents, or any law enforcement officer acting in an official capacity.

ARTICLE XIV. EXEMPTIONS & EXCEPTIONS

There shall be zero tolerance for violations of this regulation. As there are no exemptions to this regulation that will not result in undue hazard to the public health and safety of the community, there shall be no exceptions to the penalties proscribed for violation(s) of this regulation.

ARTICLE XV. SEVERABILITY

If any provision contained in this regulation is deemed invalid for any reason, it shall be severed and shall not affect the validity of the remaining provisions.

ARTICLE XVI. EFFECTIVE DATE

This regulation was approved by the Board at a legally posted and regularly scheduled meeting held September XX, 2013. This regulation shall take effect immediately upon publication of a summary in a newspaper of general circulation in the Town, which date shall be posted on the front page of this regulation.

By The Middleborough Board of Health:

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**Chairman**

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**Member**

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**Member**

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**Member**

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**Member**

