

REGULATION OF THE _____ 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%20visited%20Feb.%2013,%202023)) [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 _____ 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 _____ 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 **[City/Town]** of _____.
[N.B. Check with the Police Department before adding this section.]

D. Enforcement and Penalties:

1. Any person or entity charged with violating this regulation shall receive a notice of violation from the _____ 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 one thousand dollars (\$1000.00), 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 one thousand dollars (\$1000.00), 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 _____ Board of Health and its designees and the _____ Police Department.
6. Any person may register a complaint pursuant to this regulation to initiate an investigation and enforcement with the _____ 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 _____.
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: _____

This information is provided for educational purposes only and is not intended as legal advice. Please contact your municipal attorney for legal advice.

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