



## Board of Health

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### ARTICLE 23

### REGULATION FOR THE RESTRICTION OF DRUG PARAPHERNALIA

#### SECTION 23.1 AUTHORITY

This regulation is promulgated under the authority granted to the Needham Board of Health under Massachusetts General Laws Chapter 111, Section 31 which states that “boards of health may make reasonable health regulations”.

#### SECTION 23.2 PURPOSE

The Needham Board of Health has found that the availability and use of controlled substances are a threat to the public health and the community well-being of the Needham and that drug paraphernalia facilitates the use of controlled substances, chemical agents, and dangerous products in a manner that jeopardizes personal health. Therefore the Board of Health adopts this regulation for the purpose and with the intent to protect the public health and safety of the Town of Needham and its residents from the threat posed by the availability and use of drug paraphernalia by prohibiting persons from trafficking in, possessing, and using them within the town.

#### SECTION 23.3 DEFINITIONS

Unless otherwise indicated, terms used throughout this regulation shall be defined as they are the federal Controlled Substances Act ([21 U.S.C. Chapter 13 § 801et seq.](#)) or in its Massachusetts analog ([M.G.L. Chapter 94C](#)).

Act means the federal Controlled Substances Act ([21 U.S.C. Chapter 13 § 801et seq.](#)).

Board of Health means the Town of Needham Board of Health and its designated agents.

Board of Health Agent means the Director of Public Health and any town employee designated by the Director, which may include Public Health Department staff, law enforcement officers, fire officials, and code enforcement officials, as well as contractors.

Chemical agent means any chemical or organic compound, substance, or agent that is not made, intended and approved for consumption by humans.

Consumable product or material means a product or material, that regardless of packaging disclaimers or disclosures that it is not for human consumption or use, is in a form that readily allows for human consumption by inhalation, ingestion, injection, or application, through means including but not limited to smoking, or ingestion by mouth with or without mixing with food or drink.

Controlled substance means a substance included as a controlled substance in schedules 1 through 5 of the Act or a substance temporarily scheduled or rescheduled as a controlled substance as provided in the Act.

Controlled substance analogue has the same meaning as defined in the Act, which is a substance, the chemical structure of which is substantially similar to that of a controlled substance in schedules 1 and 2 of the Act.

Dangerous product means a consumable product or material containing a dangerous substance, including, but not limited to, cannabinoids, stimulants, psychedelic hallucinogens, and synthetic chemical agents as outlined in the subsequent Prohibitions.

Director means the Director of Public Health.

Drug Paraphernalia means all equipment, products and materials of any kinds that are used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, including planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing dangerous products and injecting, ingesting, inhaling, or otherwise introducing dangerous products into the human body. "Drug paraphernalia" includes, but is not limited to, the following:

- A. Kits for planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;
- B. Kits for manufacturing, compounding, converting, producing, processing, or preparing dangerous products;
- C. Isomerization devices for increasing the potency of any species of plant which is a dangerous product;
- D. Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of dangerous products;
- E. Scales and balances for weighing or measuring dangerous products;
- F. Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose, and lactose for mixing with dangerous products;
- G. Separation gins and sifters for removing twigs and seeds from, or otherwise cleaning or refining, any species of plant which is a dangerous product;
- H. Blenders, bowls, containers, spoons, and mixing devices for compounding dangerous products;

- I. Capsules, balloons, envelopes and other containers for packaging small quantities of dangerous products;
- J. Containers and other objects for storing or concealing dangerous products;
- K. Objects for ingesting, inhaling, or otherwise introducing dangerous products into the body, such as:
  - i. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - ii. Water pipes;
  - iii. Carburetion tubes and devices;
  - iv. Smoking and carburetion masks;
  - v. Objects, commonly called roach clips, for holding burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
  - vi. Miniature cocaine spoons and cocaine vials;
  - vii. Chamber pipes;
  - viii. Carburetor pipes;
  - ix. Electric pipes;
  - x. Air-driven pipes;
  - xi. Chillums;
  - xii. Bongs;
  - xiii. Ice pipes or chillers.

The following, along with all relevant evidence, may be considered in determining whether an object is drug paraphernalia:

- a) Statements by the owner or anyone in control of the object concerning its use;
- b) Prior convictions of the owner or other person in control of the object for violations of controlled substances law;
- c) The proximity of the object to a violation of the Controlled Substances Act;
- d) The proximity of the object to a dangerous product;
- e) The existence of any residue of a dangerous substance on the object;
- f) The proximity of the object to other drug paraphernalia;
- g) Instructions provided with the object concerning its use;
- h) Descriptive materials accompanying the object explaining or depicting its use;
- i) Advertising concerning its use;
- j) The manner in which the object is displayed for sale;
- k) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a seller of tobacco products or agricultural supplies;
- l) Possible legitimate uses of the object in the community;
- m) Expert testimony concerning its use;
- n) The intent of the owner or other person in control of the object to deliver it to persons whom he knows or reasonably should know intend to use the object to facilitate violations of the Controlled Substances Act. (1981, c. 500, s. 1.)
- o) The sale of items, which singularly is lawful, but as a whole creates a legitimate hazard to the community by selling products that help the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing,

preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing dangerous products and injecting, ingesting, inhaling, or otherwise introducing dangerous products into the human body.

Traffic and trafficking: means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, sell, or transfer.

Transfer: means to dispose of drug paraphernalia to another person without consideration and not in furtherance of commercial distribution.

**SECTION 23.4** **POSSESSION OF DRUG PARAPHERNALIA**

It is unlawful for any person to knowingly use, or to possess with intent to use, drug paraphernalia.

**SECTION 23.5** **MANUFACTURE, SALE, OR DELIVERY OF DRUG PARAPHERNALIA:**

It is unlawful for any person to sell, deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia. Sale, delivery, possession with intent to deliver, or manufacture with intent to deliver, of each separate and distinct item of drug paraphernalia shall be considered a separate offense.

**SECTION 23.6** **ADVERTISEMENT OF DRUG PARAPHERNALIA:**

It is unlawful for any person to purchase or otherwise procure an advertisement in any newspaper, magazine, handbill, or other publication, or purchase or otherwise procure an advertisement on a billboard, sign, or other outdoor display, when he/she knows that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

**SECTION 23.7** **DRUG PARAPHERNALIA EXEMPTION**

Any patient or caregiver that possesses drug paraphernalia for lawful use of Medical Marijuana (pursuant to Chapter 369 of the Acts of 2012 An Act for the Humanitarian Medical Use of Marijuana and Massachusetts Department of Public Health Regulations 105 CMR 725.000) shall be exempt from sections 23.4 and 23.5 herein.

**SECTION 23.8** **RIGHT OF ENTRY**

The Chief of Police of the Town of Needham, the Director of Public Health and his designated agents may enter upon any privately owned property, which serves the public, for the purpose of performing their duties under this Board of Health regulation.

**SECTION 23.9** **ENFORCEMENT**

This regulation may be enforced by the Director and his/her designated agents, especially the Chief of Police for the Town of Needham and his law enforcement staff as well as other code enforcement personnel so designated by the Director.

In addition to the restrictions defined herein, the Director and his/her designated agents may consider these items as violations of this section.

- a) Refusal to permit an agent of the Police or Public Health Departments to inspect the facility or any part thereof;
- b) Interference with an agent of the Police or Public Health Departments in the performance of their duty;
- c) A criminal conviction of the facility owner or employee in control of the facility, relating to the operation of the facility;
- d) Failure to pay assessed fines or penalties;
- e) The facility owner, operator, or employee's failure to comply with this ordinance;
- f) Keeping or submitting any misleading or false records, documents, or verbally stating false information related to the possession or sale of drug paraphernalia.

Any resident who desires to register a complaint pursuant to this Regulation may do so by contacting the Board of Health, the Public Health Department, or the Needham Police Department.

**SECTION 23.10** **FINES FOR VIOLATIONS OF ORDERS AND SUSPENSIONS:**

Any person or entity violating any term or condition of this Board of Health regulation, shall be subject to a fine of fifty dollars (\$50) for the first violation and a fine of one hundred dollars (\$100) for the second violation, and increasing for each subsequent violation up to the amount of three hundred dollars (\$300). Each day that a violation continues shall constitute a separate and distinct offense.

This regulation shall be enforced pursuant to M.G.L. Chapter 40, section 21D, as a noncriminal offense, or may be punished under M.G.L. Chapter 111, section 31 as a criminal offense in which the criminal fine imposed shall not exceed \$1,000.

**SECTION 23.11** **SEVERABILITY**

If any word, clause, phrase, sentence, paragraph, or section of this ordinance shall be declared invalid for any reason whatsoever, that portion shall be severed and all other provisions of this Ordinance shall remain in full effect.

**SECTION 23.12** **COMMUNITY PARTNERSHIP**

Any resident, police officer, code enforcement officer, physician, nurse, or other concerned individual that has knowledge of the sale or possession of a drug paraphernalia within the Town of Needham may inform the Needham Police Department Business Line (781-455-7570) or the Public Health Department Main Line (781-455-7500 x511) of the location of the drug

paraphernalia. Nothing within this subsection shall be enforced herein, but considered goodwill toward the betterment of the community.

**SECTION 23.13**

**EFFECTIVE DATE**

This regulation was approved by a unanimous vote of the Board of Health on September 9, 2016 and the regulation became effective on October 15, 2016. Adoption of this regulation occurred following open meetings held on May 13, 2016 and on June 17, 2016, and public hearings on July 29, 2016 and September 9, 2016.