

CITY OF MARLBOROUGH BOARD OF HEALTH
REGULATION RESTRICTING THE MANUFACTURING,
SALE, AND DISTRIBUTION OF KRATOM

SECTION

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1. Purpose & Scope

The purpose of this regulation is to protect the health of the residents and general public in the City of Marlborough.

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 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.¹

Whereas Kratom is not regulated by the federal government or in Massachusetts.

2. Authority

Whereas, the Massachusetts Supreme Judicial Court has held that “the right to engage in business must yield to the paramount right of government to protect public health by any rational means.”² Therefore, in furtherance of its mission to protect, promote, and preserve the health and well-being of its residents, this regulation is promulgated under the authority granted to the Marlborough Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “boards of health may make reasonable health regulations,” the Board of Health enacts this Regulation Restricting the Manufacturing, Sale, and Distribution of Kratom.

¹ DRUG ENFORCEMENT ADMIN., GET SMART ABOUT DRUGS, available at <http://www.getsmartaboutdrugs.gov> (last visited February 13, 2023).

² 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)).

3. Definitions

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

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

Business Agent: An individual who has been designated by the owner or operator of any business to manage or oversee the establishment.

Kratom: Refers to the leaves or an herbal extract from the leaves or other parts of an evergreen tree in the Rubiaceae family, *Mitragyna speciosa*, that contains mitragynine and 7-hydroxymitragynine. These compounds produce stimulant-like effects in low dosages and opioid-like effects in high dosages.

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.

4. Distribution of Kratom Products

(A) No person shall manufacture, distribute, sell, or offer for sale Kratom in any of its forms, as defined herein, or any Kratom-derived products, or any products containing Kratom as an additive in the City of Marlborough.

5. Enforcement and Penalties

- (A) Any person or entity charged with violating this regulation shall receive a notice of violation from the Board of Health or Board of Health Agent.
- (B) It shall be the responsibility of any establishment owner and/or the establishment owner’s manager or business agent to ensure compliance with this regulation. The owner or manager of any establishment in which Kratom is manufactured, distributed, sold, or offered for sale by any person in lawful control of the establishment, shall be responsible for the violation whether, or not, they authorized or were aware that the violation was taking place.
- (C) In the case of a violation, the violator shall receive:
 - (1) In the case of a first violation, a fine of one thousand dollars (\$1000.00).
 - (2) 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 Tobacco Products Sales Permit, for seven (7) consecutive business days.
 - (3) 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 Tobacco Products Sales Permit, for thirty (30) consecutive business days.

- (D) In accordance with applicable law, the Board of Health may modify, suspend, or rescind any license or permit to conduct a business issued by the Board of any person or entity who is found in violation of this regulation by manufacturing, distributing, selling, or offering for sale Kratom or Kratom products on the premises that is the subject of the license or permit.
- (E) The authority to inspect establishments for compliance and to enforce this regulation shall be held by the Marlborough Board of Health and its agent(s).
- (F) Any person may register a complaint pursuant to this regulation to initiate an investigation and enforcement with the Marlborough Board of Health and its agent(s).
- (G) Violations of this regulation may be enforced by the non-criminal method of disposition as provided in M.G.L. c. 40, § 21D and as enabled pursuant to the Marlborough enabling ordinance.
- (H) Each day a violation exists shall be deemed to be a separate offense.
- (I) A person who receives notice of a violation of this regulation can request a hearing before the Board of Health. This request must be made in writing and filed within seven (7) days after the date the violation was served or actually received.

6. Severability

If any paragraph or provision of this Regulation is found to be invalid or unenforceable, against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions and shall continue in full force and effect.

7. Effective Date

This Regulation shall take effect for the City of Marlborough on the **1st** day of **December 2025**.

Signed this day **October 7, 2025**.
Board of Health:

By the Marlborough


James Griffin, Chairman


Joseph Tennyson, MD, Vice-Chair