

## REGULATION OF THE LOWELL BOARD OF HEALTH

### PROHIBITING THE MANUFACTURING, SALE, AND DISTRIBUTION OF KRATOM

#### A. Statement of Purpose and Authority:

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.<sup>1</sup>

Whereas, Kratom is not regulated by the state of Massachusetts or the federal government.

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.”<sup>2</sup>

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 Lowell Board of Health pursuant to G. L. c. 111, §31, the Board of Health enacts this Regulation Prohibiting the Manufacturing, Sale, and Distribution of Kratom.

#### B. Definitions:

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

Board: The Lowell Board of Health.

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

Compliance Check: An enforcement activity where a person is sent into an establishment to attempt to purchase a restricted or prohibited product.

Kratom: Refers to the leaves or an herbal extract from the leaves or other parts of an evergreen tree in the *Rubiaceae* family native to Southeast Asia called *Mitragyna Speciosa*, that contains as its primary compounds, mitragynine and 7-hydroxymitragynine, which produces stimulant-like effects in low dosages and opioid-like effects in high dosages, and it may be marketed in different forms, including but not limited to smokeable products, tea, capsules, and as an additive to soft drinks or other products.

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.

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

<sup>2</sup> 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)).

### **C. Sale of Kratom Products:**

1. 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 Lowell.

### **D. Violations:**

1. Any person or entity charged with violating this regulation shall receive a notice of violation from the Lowell Board of Health or its designated agent(s).
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. The violator shall receive:
  - i. In the case of a first violation within a 36-month period, a fine of one thousand dollars (\$1000.00).
  - ii. In the case of a second violation within 36 months from the first 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 permit to sell tobacco products, for seven (7) consecutive business days.
  - iii. In the case of three or more violations within a 36-month period, a fine of five thousand dollars (\$5000.00) and a revocation of any permit issued by the Board, including but not limited to a permit to sell tobacco products.
3. Every day that a violation exists shall be deemed to be a separate offense. If multiple violations occur stemming from the same inspection or compliance check, they shall be treated as separate violations.
4. Failure to pay a fine issued pursuant to this regulation within 21 days of its date of receipt by the violator shall constitute a separate and subsequent violation of this regulation subject to the penalties set forth at paragraph 2 of this section. Payment of a fine is not required while an appeal is pending.
5. Any person who receives notice of a violation of this regulation may request an appeal hearing before the Board. The request must be made in writing, signed by the violator or the violator's attorney and filed with and received by the Lowell Health Department within ten (10) business days of the date the notice of violation was received by the violator.
6. Any resident who desires to register a complaint pursuant to this regulation may do so by contacting the Lowell Health Department.
7. Before suspending or revoking any permit issued by the Lowell Board of Health, 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 ten (10) business days from the date of receipt 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 therefor in writing. If after hearing, the Board finds that a

violation of this regulation occurred, the Board shall suspend or revoke the subject permit. Such suspension or revocation shall not be carried out sooner than 10 (ten) business days of the date of receipt of the Board's decision. For purposes of such suspensions or revocations, the Board shall carry them out unless it receives an order of stay or injunction from the appropriate court before the date the suspension or revocation is set to go into effect. Upon suspension or revocation of a permit, all products subject to that permit must be removed from the retail establishment. Failure to remove such products shall constitute a separate violation of this regulation. Multiple permit suspension may not be served concurrently.

8. Failure to comply with the terms of a permit suspension imposed pursuant to this regulation may subject the permit holder to additional fines, as provided in paragraph 2 of this section, and suspension of all Board-issued permits for thirty (30) consecutive business days.

**E. Enforcement:**

Enforcement of this regulation shall be carried out by the Lowell Board of Health or its designated agent(s).

**F. Severability:**

If any provision of this regulation is found to violate state or federal preemption laws or is declared invalid or unenforceable, all other provisions shall not be affected thereby but shall be in full force and effect. This provision shall not apply if section C(1) of this regulation is found to violate state or federal preemption laws or is declared invalid or unenforceable.

**G. Effective Date:**

This regulation was adopted on December 4, 2024, and it shall take effect on \_\_\_\_\_.

1. JoAnn Keegan  
Jo-Ann Keegan, RN, MSN, Chairperson

2. [Signature]  
Kathleen Cullen-Lutter, CNM

3. \_\_\_\_\_  
Alison J. Keegan, RN, BSN

4. [Signature]  
Erin Gendron, LSW

5. \_\_\_\_\_  
William J. Galvin III, MD

A True/Copy Attest

/s/ [Signature]  
Kerry A. Alexander  
Secretary to the Lowell Board of Health