

Guidance for Municipalities

The following guidance is provided to assist applicants seeking to be licensed as a Marijuana Establishment under 935 CMR 500.000, which establishes the regulatory requirements for adult use marijuana in the Commonwealth. This guidance is not legal advice. If you have questions regarding the legal requirements for licensure in the Commonwealth, you are encouraged to consult an attorney.

Notice: This Guidance document only pertains to marijuana for adult use and does not provide guidance on the medical use of marijuana program regulated by the Department of Public Health or the hemp program to be regulated by the Massachusetts Department of Agricultural Resources. The Medical Use of Marijuana Program will be transferring to the Cannabis Control Commission on or before December 31, 2018.

Timeline for Implementation of Marijuana for Adult Use

November 8, 2016	Question 4 Passed
July 28, 2017	Governor Signs Chapter 55 of the Acts of 2017
August 1, 2017	Appointment of Cannabis Advisory Board
September 1, 2017	Appointment of Cannabis Control Commission
December 22, 2017	Announcement of Draft Regulations
February 5-15, 2018	Public Hearings
February 15, 2018	End of Public Comment Period
March 7, 2018	Final Regulations Approved
March 23, 2018	Final Regulations Published in the Massachusetts Register
April 2, 2018	Priority Certification Begins
April 17, 2018	Begin Accepting Priority Applications
May 1, 2018	Begin Accepting Applications for Cultivation, Microbusiness, Craft Cooperatives, Independent Testing Labs, and Lab Agents
June 1, 2018	Begin Accepting Applications for Retail, Product Manufacturers, and Transport

Background on 2016 & 2017 Laws on Marijuana for Adult Use in Massachusetts

On November 8, 2016, Massachusetts voters voted 53% in favor of a ballot initiative known as “Question 4” authorizing the limited adult use of marijuana and the licensing of marijuana establishments, amongst other things. The ballot initiative became Chapter 334 of the Acts of 2016 and created the “Regulation and Taxation of Marijuana Act, G.L. c.94G (“2016 Marijuana Act”).

In December 2016, the Massachusetts Legislature passed Chapter 351 of the Acts of 2016. Chapter 351 accomplished a number of things. First, it exempted the cultivation of marijuana from the agricultural exemption in the Zoning Act, G.L. c.40A §3, therefore retaining local control over the placement of marijuana establishments. It also delayed the deadlines set in Chapter 334 for six months to allow the Legislature time to amend Chapter 334 (the timeline above reflects the delayed dates). It also required the Department of Public Health to enter into an agreement with a research entity to conduct a comprehensive

baseline study of marijuana use in the commonwealth. DPH is required to submit a report of its findings not later than July 1, 2018.

On July 19, 2017, the Massachusetts Legislature passed a bill (H.3818) to amend Chapter 334 and the law it created, G.L. c.94G, as well as create additional laws relating to adult and medical use of marijuana. The bill became Chapter 55 of the Acts of 2017 (“2017 Marijuana Act”) and was signed by the Governor on July 28, 2017. The 2017 Act built upon the foundation of the 2016 Act, creating a five-person Cannabis Control Commission, a twenty-five person Cannabis Advisory Board, as well as a hemp program to be run by the Department of Agricultural Resources. It also placed limits and restrictions on municipal control over the siting of marijuana establishments that will be discussed in this Guidance. The deadlines created by the Legislature in December 2016 remained unchanged.

In October 2017, the newly-formed Cannabis Control Commission held listening sessions throughout the Commonwealth. The Cannabis Advisory Board was also convened in October 2017 and broke into four subcommittees: Public Safety, Public Health, Market Participation and Marijuana Industry, which issued recommendations to the Commission regarding proposed regulations on December 5, 2017.

On December 21, 2017, the Cannabis Control Commission approved draft regulations. Public hearings were held throughout the Commonwealth and written comments were accepted through February 15, 2018. On March 7, 2018, the Commission promulgated final regulations at 935 CMR 500. It is anticipated that the regulations will be published in the Register on March 23, 2018.

Helpful Links

Chapter 334 of the Acts of 2016

<https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter334>

Chapter 351 of the Acts of 2016

<https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter351>

Chapter 55 of the Acts of 2017

<https://malegislature.gov/Laws/SessionLaws/Acts/2017/Chapter55>

Chapter 94G of the General Laws

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter94g>

Bill H.4284

<https://malegislature.gov/Bills/190/H4284>

Final Regulations

<https://masscannabiscontrol.com/wp-content/uploads/2018/03/Reposted-031218-CCC-Final-Regulations-with-disclaimer.pdf>

Cannabis Control Commission website

<https://masscannabiscontrol.com>

Definitions:

Terms used in this Guidance, such as “marijuana,” “marijuana products” and many others are defined in the Regulations, 935 CMR 500.000. Please refer to the Regulations (link provided above) if you have any questions regarding the meaning of a particular term.

Types of Marijuana Establishments

The Marijuana Acts and the draft regulations create different kinds of marijuana establishments. Unlike a registered marijuana dispensary (RMD) (also known as a “medical marijuana treatment center”), which is required to cultivate, process and retail its own marijuana and marijuana products for medical use, an adult use marijuana establishment may opt only to participate in a particular part of the industry, such as cultivation.

All marijuana establishments are subject to strict, comprehensive state regulations and inspections by Commission agents. All marijuana establishments are required to enter into host community agreements with the municipality in which they are located (there is more detail on host community agreements below). Only marijuana retailers are subject to the local marijuana tax created under the 2017 Act. One business may hold three licenses in each category, with certain exceptions.

Marijuana Cultivators

A Marijuana Cultivator may cultivate, process and package marijuana, to transfer and deliver marijuana products to marijuana establishments, but not to consumers. A Craft Marijuana Cooperative, which will be discussed in further detail below, is a type of Marijuana Cultivator. Cultivators may select what tier they will be in, which will affect their application and licensing fees. The following options are available, but no licensee may have a total canopy of more than 100,000 square feet.

Canopy means an area to be calculated in square feet and measured using clearly identifiable boundaries of all areas(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries, canopy may be noncontiguous, but each unique area included in the total canopy calculations shall be separated by an identifiable boundary which include, but are not limited to: interior walls, shelves, greenhouse walls, hoop house walls, garden benches, hedge rows, fencing, garden beds, or garden plots. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

Tiers of Marijuana Cultivator

Each licensee (except a craft marijuana cooperative) may have 3 licenses, but the total canopy authorized by the licenses added together may not exceed 100,000 square feet.

Tier 1	up to 5,000 square feet	Tier 7	50,001 to 60,000 sq. ft.
Tier 2	5,001 to 10,000 sq. ft.	Tier 8	60,001 to 70,000 sq. ft.
Tier 3	10,001 to 20,000 sq. ft.	Tier 9	70,001 to 80,000 sq. ft.
Tier 4	20,001 to 30,000 sq. ft.	Tier 10	80,001 to 90,000 sq. ft.
Tier 5	30,001 to 40,000 sq. ft.	Tier 11	90,001 to 100,000 sq. ft.
Tier 6	40,001 to 50,000 sq. ft.		

Tier Management

Expansion: A Marijuana Cultivator may submit an application to change the tier in which it is classified. A Marijuana Cultivator may change tiers to either expand or reduce production. If a Marijuana Cultivator is applying to expand production, it must demonstrate that while cultivating at the top of its production tier, it has sold 85% of its product consistently over the six months preceding the application for expanded production.

Relegation: At the time of license renewal process for Marijuana Cultivators, the Commission will review the records of the Marijuana Cultivator during the six months prior to the application for renewal. The Commission may reduce the licensee's maximum canopy to a lower tier if the licensee sold less than 70% of what it produced.

Craft Marijuana Cooperative

A Craft Marijuana Cooperative is a type of Marijuana Cultivator which may cultivate, obtain, manufacture, process, package and brand marijuana and marijuana products to deliver marijuana to Marijuana Establishments, but not to consumers, and must consist of:

- Massachusetts residents who have formed a limited liability company, limited liability partnership, or a cooperative corporation;
- A business may only have one Craft Marijuana Cooperative license;
- Members of a Craft Marijuana Cooperative may not have a controlling interest in any other marijuana establishment;
- A Craft Marijuana Cooperative is not limited to a particular number of cultivation locations, but is limited to a total canopy of 100,000 square feet and 3 locations for activities authorized for marijuana product manufacturers;
- One member of the Craft Marijuana Cooperative must have filed a Schedule F tax form (reporting farm income) in the past five years.
- The Craft Marijuana Cooperative must operate according to the seven cooperative principles published by the International Cooperative Alliance in 1995.

Marijuana Product Manufacturer

A Marijuana Product Manufacturer is an entity authorized to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to Marijuana

Establishments and to transfer marijuana and marijuana products to other Marijuana Establishments, but not to consumers.

Marijuana Retailer

A Marijuana Retailer is an entity authorized to purchase and deliver marijuana and marijuana products from Marijuana Establishments and to sell or otherwise transfer marijuana and marijuana products to Marijuana Establishments and to consumers.

Please note that similar to marijuana for medical use, edible marijuana products for adult use shall not be considered food and therefore Marijuana Retailers would not be subject to inspection by local Boards of Health under 105 CMR 590 unless local regulations requiring such inspections are promulgated.

A Marijuana Retailer provides a retail location which may be accessed by consumers 21 years of age or older or, if the retailer is co-located with a RMD by individuals who are registered qualifying patients with the Medical Use of Marijuana Program with a registration card.

Marijuana Transporter

A Marijuana Transporter is an entity that may only transport marijuana or marijuana products when such transportation is not already authorized under a Marijuana Establishment license if it is licensed as a Marijuana Transporter:

- **Third Party Transporter:** An entity registered to do business in Massachusetts that does not hold another Marijuana Establishment license pursuant to 935 CMR 500.050 and is not registered as a registered marijuana dispensary pursuant to 105 CMR 725.000.
- **Existing Licensee Transporter:** A Marijuana Establishment that wishes to contract with other marijuana establishments to transport their marijuana and marijuana products to other marijuana establishments.

Marijuana Research Facility

A Marijuana Research Facility is an academic institution, non-profit corporation or domestic corporation or entity authorized to do business in the Commonwealth of Massachusetts. A Marijuana Research Facility may cultivate, purchase or otherwise acquire marijuana for the purpose of conducting research regarding marijuana and marijuana products. Any research involving humans must be authorized by an Institutional Review Board. A Marijuana Research Facility may not sell marijuana it has cultivated.

Laboratories

Independent Testing Laboratory:

An Independent Testing Laboratory is an entity that does not hold any other type of marijuana establishment license and is properly accredited to perform tests in compliance with the stringent requirements of the Department of Public Health protocols for testing marijuana and marijuana products.

Standards Testing Laboratory:

A Standards Testing Laboratory is an entity that would otherwise qualify to be an Independent Testing

Laboratory but instead performs blind tests to verify the results of an Independent Testing Laboratory at the request of the Commission.

Microbusiness

A Microbusiness is a co-located Tier 1 Marijuana Cultivator, and/or Marijuana Product Manufacturer limited to purchase 2,000 pounds of marijuana from other Marijuana Establishments in one year.

A Microbusiness licensee shall not have an ownership stake in any other Marijuana Establishment and a majority of its executives or members must have been residents of Massachusetts for no less than 12 months prior to application is eligible to apply for a Microbusiness license.

Application fees and license fees for Marijuana Microbusinesses shall be set at 50% of the combined sum of the application fees and license fees for cultivation and/or, manufacturing.

Social Consumption & Delivery

Regulations regarding licenses for social consumption and delivery to consumers have been delayed for further study. The Commission anticipates drafting regulations regarding licenses for this category in February 2019. In the meantime, municipalities wishing to authorize social consumption in their community must follow the ballot process established in G.L. c.94G §3(b) for the election in November 2018.

Please note that legislation has been filed to clarify the ballot process (Bill H.4284, which may be reviewed at <https://malegislature.gov/Bills/190/H4284>) and this guidance will be updated if the legislation is enacted.

Role of Cannabis Control Commission

The Commission is required to promulgate statewide regulations addressing: public health issues such as products, labeling, advertising and potency; industry issues such as cultivation, distribution, transportation and seed-to-sale tracking; and market participation for communities including women, minority, and veteran-owned businesses, as well as growing cooperatives.

The Commission will also review applications from candidates for licenses, determine which applicants may be awarded licenses, deny an application or limit, condition, restrict, revoke or suspend a license, establish a registration process, based on finding of suitability or approval of licensure, check the backgrounds of individuals associated with applicants or licensees. The Commission may inspect marijuana establishments, seize and remove from the premises of a marijuana establishment and impound any marijuana, equipment, supplies, documents and records obtained or possessed in violation of the law for the purpose of examination and inspection, inspect all papers, books and records of close associates of a licensee whom the Commission suspects is involved in the financing, operation or management of the licensee, impose fees and fines, and conduct adjudicatory proceedings.

The Commission may also refer cases for criminal prosecution to the appropriate federal, state or local authorities, monitor any federal activity regarding marijuana, adopt, amend or repeal regulations for the

implementation, administration and enforcement of the law, and may prepare, publish and distribute studies, reports, bulletins and other materials.

Municipal Role in Commission Licensing Process

The Commission is required by law to engage in a licensing process for marijuana establishments. During the application process, applicants will be required to demonstrate that they have held a community outreach meeting within the past six months and that they have executed a Host Community Agreement with the municipality. Once the application is complete, the municipality will be notified and given an opportunity to confirm and that the proposed location is compliant with bylaws or ordinances at the time the application was completed.

Licensing Process: Community Outreach Meeting

The applicant will need to submit documentation of a community outreach meeting, which must occur within six months of filing its application, including:

- **Notice**
 - Must contain the time, place and subject matter of the meeting, including the proposed address of the Marijuana Establishment, that was published in a newspaper of general circulation in the city or town at least seven calendar days prior to the hearing;
 - a copy of the meeting notice must be filed with the town or city clerk, the planning board, the contracting authority for the municipality, and local licensing authority for adult use of marijuana (if applicable); and
 - a copy of the meeting mailed to abutters and other parties of interest identified in the regulations;
- **Information Discussed:** information presented at the community outreach hearing, which must include:
 - the type(s) of Marijuana Establishment to be located at the proposed address;
 - information adequate to demonstrate that the location will be maintained securely; steps to be taken by the Marijuana Establishment to prevent diversion to minors;
 - a plan by the Marijuana Establishment to positively impact the community; and
 - information adequate to demonstrate that the location will not constitute a nuisance.
- **Q & A:** community members must be permitted to ask questions and receive answers from representatives of the Marijuana Establishment.

Licensing Process: Host Community Agreement

Documentation in the form of a single-page certification signed by the contracting authorities for the municipality and the applicant evidencing that the applicant for licensure and host municipality have executed a host community agreement.

Licensing Process: Municipal Notification & Permitting

Notice: Once the Commission determines an application is complete, it is required to notify a municipality that it has received a completed application for a marijuana establishment in the municipality.

Sixty Day Deadline: The municipality has sixty (60) days from receipt of the application to notify the Commission that the applicant is not in compliance with local ordinances or bylaws. If communication from the municipality is not received within 60 days, the applicant will be deemed to be compliant with all applicable local ordinances and bylaws.

Local Permits: Please note that if a local ordinance or bylaw requires local permitting or licensing, the applicant does not need to have the permitting or licensing granted at the time of the notice to a municipality. Instead, the Commission simply needs to know whether such permitting or licensing is available for that particular location.

Provisional License: Similar to the process with registered marijuana dispensaries, when it completes the application process, including the municipal notification, an applicant will initially receive a provisional license. If a provisional license is issued and the applicant does not yet have local permits or licenses, it may seek the necessary local permits or licenses prior to requesting a final license from the Commission.

Final License: A final license may be issued by the Commission once the applicant has passed all the necessary inspections to receive a final license, including a demonstration that all necessary local permits and licenses have been granted.

Local Licensing: A municipality may also implement its own licensing process, as long as it does not conflict with the state laws and regulations governing marijuana establishments.

Role of Municipalities Regarding Adult Use of Marijuana

The Marijuana Acts both authorize and limit the way in which municipalities can control marijuana establishments in their communities. It also protects any restrictions or limitations a municipality may have imposed as of July 1, 2017 on the operation of RMDs, marijuana establishments or both, pursuant to the 2012 law authorizing medical use of marijuana (Chapter 369 of the Acts of 2012) or the 2016 Act. Below is a brief overview of provisions relating to municipal control. Any decision to implement local controls on marijuana should be made in consultation with a municipality's attorney.

Host Community Agreements

Under state law, marijuana establishments and RMDs are required to execute Host Community Agreements with the municipalities in which they operate. The agreement must stipulate the responsibilities of the community and the marijuana establishment or RMDs.

The agreement may include a community impact fee of up to 3% of gross sales to be paid to the host community, as long as the fee is reasonably related to real costs imposed on the municipality due to the establishment or RMD operating there. The agreement may not be effective for longer than five years. Please note that any cost to a city or town imposed by the operation of a marijuana establishment or RMD must be documented and considered a public record under Massachusetts public records laws, G.L. c.4 §7 cl. 26 and G.L. c.66 §10.

The Commission encourages municipalities to carefully consider the impact of the particular marijuana establishment proposed for a community, as well as benefits it may bring in local revenue and employment, when negotiating a host community agreement.

There is legislation pending to protect host community agreements executed on or before July 1, 2017 malegislature.gov/Bills/190/H4284. The same legislation requires municipalities receiving community impact fee payments to establish a separate account into which fee payments must be deposited.

Local Control: Taxes

A municipality that accepts the local sales tax option may collect a 3% tax on sales of marijuana by a marijuana retailer to a consumer. The tax will be collected with other sales tax and distributed to municipalities at least four times per year. Please note that there is legislation pending - malegislature.gov/Bills/190/H4284 - that would remove “marijuana products intended for consumption as defined in G.L. c.94G” from the exemption from sales tax for food products for human consumption in G.L. c.64H §6.

Local Control: Bylaws & Ordinances

The law allows, but does not require, municipalities to pass bylaws and ordinances governing the “time, place, and manner” of marijuana establishments (cultivators, retailers, manufacturers, testing labs, and any other licensed marijuana-related businesses) as well as businesses dealing with marijuana accessories. Such bylaws and ordinances may not be “unreasonably impracticable.”

Under the definition in the law, this means that the local laws cannot be so difficult to comply with that they would subject licensees to unreasonable risk, or require such a high investment of risk, money, time or any other resource or asset, that a reasonably prudent businessperson would not operate a marijuana establishment.

Alternatively, a municipality may determine a proposed marijuana-related use falls under an existing use authorized by its bylaws or ordinances. For the purpose of understanding how to respond to a notification from the Commission that an application has been deemed to be complete, the Commission provides the following interpretation of the limits of local control.

Local Control: Conversion from Medical Use to Adult Use

Zoning bylaws or ordinances are not permitted to operate to prevent the conversion of an RMD registered not later than July 1, 2017 that is engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment for adult use engaged in the same type of activity. The Commission interprets conversion to include not only replacing the operation of a registered marijuana dispensary entirely with the operation of a marijuana establishment, but also to address adding marijuana establishment operations to the operations of a RMD.

There is legislation pending - malegislature.gov/Bills/190/H4284 - that clarifies this interpretation. A registered marijuana dispensary that has received its provisional or final registration no later than July 1, 2017 is grandfathered against zoning bylaws or ordinances that would prevent it from conducting the

same type of activities for adult use of marijuana that it is engaged in for medical use of marijuana. For a discussion on bans or limiting the number of marijuana establishments through a general bylaw or ordinance, please see the next page.

Local Control: Moratoria

A Moratorium of a Reasonable Length of Time is Permitted. Although municipalities are prohibited from using a zoning bylaw or ordinance to prevent the conversion of a registered marijuana dispensary, the Commission does not interpret the word prevent to prohibit the municipality from imposing a moratorium, a temporary delay passed as a zoning amendment to allow a municipality to engage in a planning process to determine how best to zone marijuana establishments for adult use in its community.

The Commission will interpret the reasonableness of the length of a moratorium in a manner consistent with the opinions issued by the Attorney General's Office in reviewing moratoria proposed by communities, which, as of the date of this publication, in the majority of cases has allowed moratoria through December 31, 2018. When the moratorium expires, the Commission cautions local officials from amending their zoning bylaws or ordinances in a manner that could be deemed to conflict with the statute and recommends consulting the City Solicitor and Town Counsel regarding any zoning amendments.

Local Control: Additional Permits

Additional Local Permits for Adult Use May Be Required. Although municipalities are prohibited from using a zoning bylaw or ordinance to prevent the conversion of a registered marijuana dispensary, the Commission does not interpret the word prevent to prohibit the municipality from requiring a registered marijuana dispensary eligible under the statute to apply for any additional local permits required to change its existing operation with a marijuana establishment for adult use. The Commission cautions local permitting boards from exercising their discretion in acting on a request for a local permit in a manner that could be deemed to conflict with the statute and recommends consulting the City Solicitor and Town Counsel during their decision-making.

Local Control: Bylaws, Ordinances, and Ballots

Banning or Limiting the Number of Marijuana Establishments in a Municipality:

A municipality may restrict the number of marijuana establishments in its community, but it must follow certain procedures to do so.

- A municipality may pass a bylaw or ordinance limiting the number of marijuana retailers to 20% or more of the number of liquor licenses issued pursuant to G.L. c.138 §15 (commonly known as "package stores") in that municipality. For example, if a municipality has 100 such liquor licenses, that municipality may set a maximum limit for 20 marijuana retailers.
- If the governing body of a municipality seeks to ban marijuana retailers from operating in the municipality, limit the number of them to fewer than 20% of the number of liquor licenses or limit the number of any type of marijuana establishment to fewer than the number of RMDs registered to engage in the same type of activity in the city or town, there are two different procedures for proceeding, which depend on how the municipality voted on the ballot initiative to legalize marijuana in 2016.

- If a municipality voted no on the initiative, then the governing body may limit or ban the number of marijuana establishments by passing a bylaw or ordinance prior to and including December 31, 2019.
- If a municipality voted yes on the initiative or if it is after December 31, 2019, then the question must be posed to the people of the municipality at a regular or special election following a specific process and wording.
- There is legislation pending - malegislature.gov/Bills/190/H4284 - to clarify the election process.

Ban:

If a municipality enacts a complete prohibition on marijuana establishments for adult use through a general bylaw or ordinance, the Commission will not issue a license so as to authorize the conversion of a registered marijuana dispensary to a marijuana establishment for adult use in that municipality.

Limited Number:

If a municipality adopts a general bylaw or ordinance imposing a limitation on the number of marijuana establishments within its community, such that the amount allowed is less than the registered marijuana dispensaries within that community, the municipality must determine which registered marijuana dispensaries will be permitted to proceed to the application process for adult use by executing a host community agreement with those dispensaries.

Local Control: Buffer Zones, Signage, and Transportation**Buffer Zone:**

Under state law, a marijuana establishment may not be located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12. Municipalities may adopt an ordinance or bylaw to reduce that distance requirement.

Signage:

A municipality may regulate, by bylaw or ordinance, signage regarding marijuana-related uses, but the ordinance or bylaw may not impose a standard more restrictive than those applied to retail establishments selling alcoholic beverages within the municipality.

Transportation:

Municipalities are prohibited from barring the transportation of marijuana or marijuana products or adopting an ordinance or by-law that makes the transportation of marijuana or marijuana products unreasonably impracticable.

Questions?

If you have additional questions regarding types of Marijuana Establishments, please contact the Commission at CannabisCommission@State.MA.US or (617) 701-8400.