

THE REGULATION OF ADULT USE MARIJUANA

Brian W. Riley, Esq.
Town of New Marlborough
August 6, 2018

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ATTORNEYS AT LAW

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AN ACT TO ENSURE SAFE ACCESS TO MARIJUANA

- On November 8, 2016, Massachusetts voters approved (53% in favor) Question 4 legalizing the adult use of marijuana and marijuana establishments (Chapter 334 of the Acts of 2016). **(NATICK VOTE: 54.07% voted in favor)**
- On July 28, 2017, Governor Baker signed the General Court's revised law on the subject, "An Act to Ensure Safe Access to Marijuana" (the "Act"), adopted as Chapter 55 of the Acts of 2017.
- The Act also makes changes to the Medical Use of Marijuana Program, which was established by Chapter 369 of the Acts of 2012, "An Act for the Humanitarian Medical Use of Marijuana," following the passage of Ballot Question 3 in the 2012 general election.



PERSONAL USE OF NON-MEDICAL MARIJUANA

Personal use of marijuana not subject to municipal regulation:

- **Public possession of 1 ounce or less of marijuana**
 - 21 years or older
- **Home growth and Possession**
 - Up to 10 ounces of marijuana for personal use
 - Any marijuana produced on premises by not more than 6 marijuana plants
 - Up to 12 plants if multiple growers on the premises
- **Give away/Transfer to other consumers up to 1 ounce**
 - No remuneration
 - Not advertised to public
 - 21 or older
- **Possession and manufacturing of marijuana accessories**
 - Persons 21 years of age or older may also possess or manufacture marijuana accessories or sell such accessories to a person 21 years of age or older.

PERSONAL USE OF NON-MEDICAL MARIJUANA

Limitations on personal use of marijuana:



- **Visibility**
 - Cultivation and processing marijuana plants may not be visible from a public place.
- **Security**
 - Marijuana or marijuana products exceeding 1 ounce within the person's place of residence must be secured by a lock.
- **Public Consumption**
 - No person shall consume marijuana in a public place or smoke marijuana where smoking tobacco is prohibited.
 - The term "public place" is not defined in the Act; may include areas both privately and publicly owned to which the public have rights of access by invitation, either express or implied.
- **Open Container**
 - Open containers of marijuana or marijuana products are prohibited in the passenger area of any motor vehicle.

TYPES OF LICENSED ADULT USE MARIJUANA

Types of Adult-Use Marijuana Establishments as defined in
G.L. c.94G, s.1

- Marijuana Establishment means:
 - "Marijuana cultivator"
 - "Marijuana retailer"
 - "Marijuana product manufacturer"
 - "Independent testing laboratory"
 - Any other type of licensed marijuana-related business
 - NOT a Medical Marijuana Treatment Center



OTHER TYPES OF LICENSED ADULT USE MARIJUANA

Additional types of Licensed Marijuana Establishments

- Craft Marijuana Cultivator Cooperative
- Microbusiness
- Marijuana Transporter



TYPES OF LICENSED MEDICAL USE MARIJUANA

Medical Use Marijuana licensed by the Department of Public Health
(105 CMR 725.00)

- Medical Marijuana Treatment Center (or RMD)
 - Each RMD is licensed (registered) to cultivate, process and retail its own marijuana under a single license
 - DPH will continue to regulate medical-use marijuana in the short-term under its existing regulatory scheme, 105 CMR 725
 - Transfer of oversight and regulation of medical-use marijuana to the Cannabis Control Commission will occur on or before December 31, 2018.



THE CANNABIS CONTROL COMMISSION

- Five member Cannabis Control Commission (“CCC”) has been given comprehensive oversight for all adult use and medical use marijuana
- CCC is charged with implementing and enforcing statewide regulations addressing the following:
 - public health issues, including product labeling, advertising and potency
 - Industry issues, including cultivation, distribution, transportation and seed-to-sale tracking
 - Market participation for communities, including women, minorities, veterans and growing cooperatives
 - Licensing
 - Inspections
 - Enforcement



CCC LICENSING PROCESS

Application of Intent

- Incorporation
- Capital
- Bond
- Property Interest
- *Municipal Information*
- Positive Impact on DIA

Background Check

- All executives, managers, persons or entities with direct or indirect authority over the management policies, cultivation or security operations
- Fingerprint check
- Nationwide civil & criminal

Management and Operations Profile

- Certificate of Good Standing with SoS and DOR
- Business Plan
- Operating Policies and Procedures
- Training Plan

CCC Licensing Process

Background Check Packet includes:

- A CORI check form;
- Requirement for fingerprinting that enables a multi-state criminal history check;
- Narrative information from individuals listed on the application as executives, members, close associates or managers.
- MANDATORY DISQUALIFICATIONS under the statute (not including prior marijuana offenses).



Cultivation and Manufacturing Requirements

- **Cultivation may be indoor or outdoor**
 - Must be in designated area that is not visible from public place without aid of binoculars, aircraft or other special aids
- Cultivation and production must satisfy minimum **energy efficiency and equipment standards** established by the Commission and environmental laws relating to water quality, solid and hazardous waste management.
 - CCC will establish “best management practices” to reduce energy and water usage, engage in energy conservation and mitigate environmental impacts
- Production of edible marijuana products must be prepared, handled and stored in compliance with the sanitation requirements of 105 CMR 500.00 (Good Manufacturing Practices for Food) and with requirements for food handlers
- Limitations on edible products:
 - May not take the form of a shape of human, animal or fruit or shape that bears likeness or characteristics of a realistic or fictional human, animal or fruit, including artistic, caricature, or cartoon renderings
 - May take the form of geometric shapes and be “fruit flavored”

Operational Requirements

- All marijuana and marijuana products must be handled in compliance with sanitary requirements.
- Edible marijuana products are not considered food under the law, but must be handled in compliance with sanitary requirements for wholesale manufacturing, retail sale and transportation of food.
- All marijuana and marijuana products must be tested in compliance with the testing protocols established by the Department of Public Health.
- All marijuana and marijuana products must be tracked from seed to sale in interoperable database.
- \$5,000 bond or cash to be posted in the event of the need to destroy cannabis or cannabis products
- Required compliance with existing state laws on cultivation, waste disposal, etc.
- Energy conservation and environmental requirements.

Security Requirements

- ❖ Cultivators, marijuana product manufacturers, independent laboratories and research facilities must restrict access to only authorized employees and visitors;
- ❖ All inventory must be tracked on the interoperable system set by the Commission;
- ❖ Must be alarmed;
- ❖ Visitors must be logged;
- ❖ Marijuana and marijuana products must be stored in limited access areas;
- ❖ 24 hour video surveillance is required;
- ❖ Must be sufficiently lit to allow readable image to be captured;
- ❖ Security plan filed with local law enforcement.



Security Requirements

Access to Retail Stores

- ❖ Retailers must check government issued ID to demonstrate someone is 21 years of age or older before allowing anyone access to marijuana establishment for adult use.
- ❖ For co-located medical marijuana dispensaries and adult use marijuana establishments, retailers must check government issued ID to demonstrate someone is 21 years of age OR check that someone has a DPH Program ID card showing they are a patient and a government ID showing they are 18 years of age or older.



Marketing, Advertising, Branding

Permitted Practices

- ❖ CAN have logo, but logo CAN'T use medical symbols, images of marijuana, related paraphernalia, and colloquial references to cannabis and marijuana are prohibited from use in this logo;
- ❖ Sponsorship of a charitable, sporting or similar event, but marketing limit to audience expected to be 85% 21 years and older according to data;
- ❖ Locked display cases inside each establishment;
- ❖ Any marketing shall include statement "Please Consume Responsibly" and at least 2 other warnings from menu of choices;
- ❖ All marketing must include warning developed by DPH.



Labelling Requirements

Comprehensive labelling requirements, including:

- ❖ Requirements specified for type of product;
- ❖ Name and contact information of creator;
- ❖ Cannabinoid profile, as well as ingredients;
- ❖ Warning re: allergen;
- ❖ DPH warning;
- ❖ Graphic symbol indicating product contains marijuana and that it is dangerous to children;
- ❖ Serving size;
- ❖ Batch and serial number;
- ❖ Confirmation of testing;
- ❖ Directions for use.

Packaging Requirements

Comprehensive packaging requirements:

- Certified by independent third party to be child-resistant;
- Resealable;
- Opaque, plain design;
- No neon colors;
- No resemblance to existing non-marijuana consumer products;
- No designs, brands or names typically marketed to minors;
- No symbols or celebrities that are commonly used to market products to minors;
- No images of minors; or
- No words that refer to products that are commonly associated with minors or marketed by minors.

CURRENT CCC TIMELINE

April 1, 2018	<ul style="list-style-type: none">• Began certification application for “priority applicants,” which include Medical Marijuana Treatment Centers and “Economic Empowerment Applicants”
April 18, 2018	<ul style="list-style-type: none">• Began accepting license applications from certified “priority applicants.” All license types available.
May 1, 2018	Open applications for: <ul style="list-style-type: none">• Cultivation• Microbusiness• Craft cooperatives• Independent Testing Laboratories• Laboratory Agents
June 1, 2018	Open applications for: <ul style="list-style-type: none">• Retail• Product manufacturers• Transport

MUNICIPAL ROLE IN LICENSING BY THE CANNABIS CONTROL COMMISSION

As part of CCC license application under Draft Regulations applicants will be required to:

Conduct a “Community Outreach Hearing”

Enter into Host Community Agreement

Certify compliance with local zoning, including buffer zone requirements

COMMUNITY OUTREACH MEETING

CCC Regulations require an Applicant to hold a Community Outreach Meeting within six (6) months prior to submission of license application to CCC

Notice

Meeting must be advertised at least seven (7) calendar days prior to date of hearing

Copy of meeting notice filed with town or city clerk, planning board, contracting authority for the municipality, local licensing authority for adult use marijuana (if applicable)

Copy of meeting notice must be sent to abutters

Content of Hearing

Discussions of type(s) of Marijuana Establishment to be located at proposed address

Security information

Steps taken by Applicant to prevent diversion to minors

Plan for positive community impact

Information to demonstrate location will not be a nuisance

Requirement for Q&A from community members to representatives of Marijuana Establishment

HOST COMMUNITY AGREEMENTS

Host Community Agreements

The Act requires that both recreational marijuana establishments and medical marijuana treatment centers enter into a HCA with host communities and allows for a “community impact fee.”

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- The community impact fee must be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment centers
 - The community impact fee shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years.
 - The Act does not expressly preclude renegotiation of a Community Impact Fees at the end of the initial five year term.
 - The municipality is required to document its costs.
 - Applicant must certify to the CCC that it has entered into a HCA as part of application to CCC – prerequisite for completion of an application.

ZONING BYLAW/ORDINANCE COMPLIANCE

Applicants must submit to the CCC documentation that a proposed site is compliant with the bylaws/ordinances *in effect* at the time of the application



Once application filed with CCC is deemed complete, the CCC will notify the municipality



The municipality has 60 days from date of correspondence from CCC to notify the CCC that the applicant is not in compliance with local ordinance/bylaw



If no communication is sent from the municipality, the Applicant will be deemed in compliance

ZONING BYLAWS/ORDINANCES

Time , Place and Manner

- Municipalities may regulate the “time, place and manner” of marijuana establishment operations and impose reasonable safeguards.
- May include special permit or site plan review
- May include creation of overlay districts

May not be “unreasonably impracticable.”

- *“the measures necessary to comply” may not 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.” (G.L. c.94G, s.1)*

Existing Use Classifications

- A proposed marijuana-related may be regulated under an existing use classifications.
- *Municipalities may not interpret prohibitory bylaws/ordinances as excluding marijuana establishments*

Local licensing

- CCC regulations provide that a municipality may implement its own licensing process/fees provided it does not conflict with state law.

ZONING BYLAWS/ORDINANCES

Ordinances and bylaws may also:

- restrict licensed cultivation, processing and manufacturing of marijuana that is a “public nuisance,”
- establish restrictions on public signs related to marijuana establishments, provided the standard is not more restrictive than those applied to retail establishments selling alcoholic beverages within a municipality
- establish a civil penalty for violation of an ordinance or bylaw
- Establish a buffer zone

Bylaws/Ordinances may not bar the transportation of marijuana or marijuana products

Standard practices for adoption of zoning ordinances or bylaws will apply (G.L. c.40A, sec.5)

ZONING BYLAWS/ORDINANCES

Buffer Zone Requirements

Under the Act, 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 (measured from lot lines of impacted properties).

Municipalities may adopt an ordinance or bylaw that reduces that distance requirement

NOTE: This buffer is less restrictive than the default buffer zone imposed by DPH on medical marijuana treatment centers:

“Absent local siting requirements, MMTCs shall not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate.”

105 CMR 725.110(A)(14)

LIMITATION OR PROHIBITION

Pursuant to G.L. c.94G, §3, a municipality may prohibit or limit recreational marijuana establishments by bylaw or ordinance with respect to the following:

prohibit the operation of **one or more types** of marijuana establishments

limit the number of marijuana retailers **to fewer than 20 percent** of the number of retail off-premises alcoholic beverage licenses issued under G.L. c.138 by the municipality

limit the number of any type of marijuana establishment to **fewer than the number of medical marijuana treatment centers** registered to engage in the same type of activity in the municipality.

LIMITATION OR PROHIBITION - PROCESS

If a municipality voted in favor of Question 4 on November 8, 2016 [i.e., a majority of voters casting ballots voted “yes” on the question], then two votes must be taken before a prohibiting or limiting bylaw/ ordinance can be effective:

- (1) it must be approved by the voters by ballot at an annual or special election, and
- (2) the ordinance or bylaw must be approved by the local legislative body.

LIMITATION OR PROHIBITION



Municipalities may impose bylaw limitations on marijuana retail establishments amounting to 20% or higher than the number of package store licenses issued without the two step ballot/bylaw process

ON-SITE SOCIAL CONSUMPTION

Petition for Question on State Ballot to Social Consumption

Requirements:

Petition of not fewer than 10 percent of the number of the voters of the city or town voting at the state election preceding the filing of the petition (G.L. c.94G, s.3(b))

- The ballot question must be presented to the voters of the city or town at the next biennial state election to allow the consumption of marijuana and marijuana products on the premises where they are sold.
- Petition must conform to provisions of General Laws relating to initiative petitions at the municipal level
- Likely requirement will be for petition to be filed with the Secretary of the Commonwealth no later than the first Wednesday in August.
- This is the ONLY procedure whereby a municipality can allow social consumption.

ZONING MORATORIA

Zoning Moratoria

- A zoning moratorium imposes a temporary limit on the ability of applicants to locate marijuana establishments within a municipality to allow additional time to plan for regulation of marijuana uses.
- ***New Marlborough has a zoning moratorium on adult use marijuana in effect until June 30, 2019.***

LOCAL TAX OPTION



- The Act created a new Chapter 64N of the General Laws setting tax rates for the sale of recreational marijuana products.
- Section 3 allows cities and towns to impose a local sales tax on the “sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the city or town” up to 3% of the total sales price.

QUESTIONS?



CONTACT INFORMATION

Brian W. Riley, Esq.

KP Law, P.C.

101 Arch Street, 12th Floor

Boston, MA 02110

(617) 556-0007

briley@k-plaw.com

www.k-plaw.com



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