

Guidance for Municipalities Regarding Marijuana for Adult Use
January 2018

The following information is provided to assist municipalities by addressing questions related to the regulation of marijuana establishments. Additional information is available on the Cannabis Control Commission website at <https://www.mass.gov/orgs/cannabis-control-commission>. Please note that this Guidance document only pertains to marijuana for adult use and does not provide guidance on the hemp program to be regulated by the Massachusetts Department of Agricultural Resources.

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Timeline for Implementation of Marijuana for Adult Use

August 1, 2017	Appointment of Cannabis Advisory Board
September 1, 2017	Appointment of Cannabis Control Commission
December 22, 2017	Announcement of Draft Regulations
February 15, 2018	End of Public Comment Period
February 5-15, 2018	Public Hearings
March 15, 2018	Deadline for Promulgation of Final Regulations
April 1, 2018	Applications for Certain Marijuana Establishments Accepted
June 1, 2018	First Provisional Licenses May Be Issued

The information presented in this Guidance is based on Chapter 334 of the Acts of 2016 and Chapter 55 of the Acts of 2017 (the "Marijuana Acts"), as well as the draft regulations published in December, 2017. After the final regulations are promulgated in March, 2018, this Guidance will be promptly updated.

Background on 2016 and 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 (<https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter334>) 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 (<https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter351>). 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, including a survey of: (i) patterns of use, methods of consumption and general perceptions of marijuana; (ii) incidents of impaired driving and hospitalization related to marijuana use; and (iii) economic and fiscal impacts for state and local governments, which shall include the impact of legalization on the production and distribution of marijuana in the illicit market as well as costs and benefits to state and local revenue. DPH is required to submit a report of its findings to the Chairs of the Senate and House Committees on Ways and Means and the Senate and House Chairs of the Joint Committee on Public Health 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 (<https://malegislature.gov/Laws/SessionLaws/Acts/2017/Chapter55>) (“2017 Marijuana Act”). 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. On December 21, 2017, the newly-formed Cannabis Control Commission approved draft regulations (<https://www.mass.gov/files/documents/2017/12/22/DraftRegulations122117.pdf>). The information presented in this Guidance is based on the 2016 and 2017 Acts (collectively referred to in this document as the “Marijuana Acts”), as well as the draft regulations. After the final regulations are promulgated in March, 2018, this Guidance will be promptly updated.

Types of Marijuana Establishments

The Marijuana Acts and the draft regulations create different kinds of marijuana establishments. Unlike a medical marijuana treatment center, which is required to cultivate, process and retail its own marijuana and marijuana products, 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 Cultivator: A marijuana cultivator may cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.

Tier 1: up to 1,000 square feet of canopy;

Tier 2: 1,001 to 5,000 square feet of canopy;

Tier 3: 5,001 to 10,000 square feet of canopy;

Tier 4: 10,001 and over square feet of canopy.

Craft Marijuana Cultivator Cooperative: a craft marijuana cultivator cooperative must consist of Massachusetts residents who have formed a limited liability company, limited liability partnership, or another business structure approved by the Commission to cultivate, obtain, manufacture, process, package and brand marijuana and marijuana products to deliver marijuana to marijuana establishments, but not to consumers. A business may only have one craft marijuana cultivator cooperative license.

Marijuana Product Manufacturer: 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: an entity authorized to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

Storefront Retailer: A marijuana retailer that provides a retail location accessible to consumers 21 years of age or older or in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program, if the retail store is co-located with a medical marijuana treatment center.

Delivery-Only Retailer: A marijuana retailer that does not provide a retail location accessible to the public, but is authorized to deliver directly from a marijuana cultivator

facility, Craft Marijuana Cultivator Cooperative facility, marijuana product manufacturer facility, or micro-business.

Marijuana Social Consumption Establishment: A marijuana social consumption establishment may purchase marijuana from licensed marijuana establishments and sell single servings of marijuana to consumers for consumption on the premises.

Primary Use: A primary use marijuana social consumption license shall be required for any commercial enterprise for which 51% or more of average monthly revenue is derived from the sale of marijuana products to be consumed on the premises (e.g. cannabis café).

Mixed Use: A mixed use marijuana social consumption license shall be required for any commercial enterprise for which the consumption of marijuana is a secondary or shared purpose to a non-cannabis business purpose. (e.g. massage studio that uses cannabis-infused lotion).

Marijuana Research Facility: 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 cultivated under its research license, but may also hold a marijuana retailer license.

Independent Testing Laboratory: 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: 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.

Marijuana Transporter: An entity 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 Micro-Business: A microbusiness is a co-located Tier 1 or Tier 2 marijuana cultivator, marijuana product manufacturer, and marijuana delivery service. 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 micro-business license. Application fees and license fees for marijuana micro-businesses shall be set at 50% of the combined sum of the application fees and license fees for each of the following activities in which the licensee engages: cultivation, manufacturing, delivery.

Role of the 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, that they have executed a Host Community Agreement with the municipality and that their proposed location is compliant with zoning bylaws or ordinances at the time of the application.

- *Community Outreach Meeting:* the applicant will need to submit documentation of the hearing, including:

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- *Notice*: the hearing must be advertised at least seven calendar days prior to the hearing, a copy of the hearing 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 hearing mailed to abutters;
- *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; information adequate to demonstrate that the location will not constitute a nuisance to the community by noise, odor, dust, glare, fumes, vibration, heat, glare, or other conditions likely to cause nuisance;
- *Q & A*: community members must be permitted to ask questions and receive answers from representatives of the Marijuana Establishment.
- *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;
- *Zoning Bylaw/Ordinance Compliance*: Documentation that the proposed site is compliant with bylaws/ordinances in effect at the time of the application, including a certification from the municipality that it is in compliance, including with the buffer zone requirement (see more information on the buffer zone below).

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. 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 by-laws. If no communication is received, the applicant will be deemed to be compliant with all applicable local ordinances and by-laws. Similar to the process with registered marijuana dispensaries, when it completes the application process, an applicant will receive a provisional license, followed by a final license once it has passed all the necessary inspections to receive a final license.

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

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 medical marijuana treatment centers, 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.

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.

- *Cannot Prohibit Conversion from Medical to Adult:* Zoning bylaws or ordinances are not permitted to operate to prevent the conversion of a medical marijuana treatment center (also known as a registered marijuana dispensary or RMD) licensed or 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. Zoning bylaws or ordinances are also not allowed to limit the number of marijuana establishments below certain limits unless specific procedures are followed (see below).
- *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 medical marijuana treatment centers 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. A list of each municipality voted can be reviewed [here](#).

- If a municipality voted no on the initiative, then the governing body may limit or ban the number of marijuana establishment through by passing a bylaw or ordinance prior to December 31, 2019.
- If a municipality voted yes on the initiative, then the question must be posed to the people of the municipality at a regular or special election following a specific process and wording.
- *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.

Local Tax

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.

Host Community Agreements

Under state law, marijuana establishments and medical marijuana treatment centers 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 medical marijuana treatment centers. 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 medical marijuana treatment center 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 medical marijuana treatment center 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.

Questions

If you have additional questions regarding local control over marijuana establishments or other questions regarding the Marijuana Acts, contact the Cannabis Control Commission at CannabisCommission@State.MA.US or 617-701-8400.