

AN ACT TO ENSURE SAFE ACCESS TO MARIJUANA

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Prepared for the
Montachusett Regional Planning Commission
March 28, 2018

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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).
- 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.



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**
 - 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.

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
- Third party transporter
- Existing Licensee Transporter



TYPES OF MARIJUANA ESTABLISHMENTS

Marijuana Cultivator means an entity licensed to:

- ❖ Cultivate marijuana,
 - ❖ process and package marijuana,
 - ❖ transfer marijuana to other Marijuana Establishments, but not to consumers.
- A **Craft Marijuana Cooperative** is a type of Marijuana Cultivator.



TYPES OF MARIJUANA ESTABLISHMENTS

Marijuana Cultivator

Each licensee (except a craft marijuana cooperative) may have up to 3 cultivation licenses; 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.
-
- ❖ To expand production, licensee must demonstrate it has sold 85% of its product consistently over the six months preceding the application for expanded production.
 - ❖ The Commission may reduce the licensee's maximum canopy to a lower tier if the licensee sold less than 70% of what it produced.

TYPES OF MARIJUANA ESTABLISHMENTS

Craft Marijuana Cultivator Cooperative

- Must be Massachusetts Residents
- Organized as a limited liability company, limited liability partnership, or cooperative corporation
- Licensed to cultivate, obtain, manufacture, process, package and brand marijuana and/or marijuana products
- May transport to Marijuana Establishments – not consumers
- Only one craft marijuana cultivator cooperative license per business entity
 - Not limited in the number of cultivation locations it may operate
 - Limited to cultivating 100,000 square feet of canopy.
 - The cooperative may also conduct activities authorized for Marijuana Product Manufacturers at up to three locations.

TYPES OF MARIJUANA ESTABLISHMENTS

Marijuana Product Manufacturer

An entity authorized to:

- obtain
- manufacture
- process; and
- package marijuana and marijuana products

May also deliver marijuana and marijuana products to marijuana establishments and transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.



TYPES OF MARIJUANA ESTABLISHMENTS

Marijuana Retailer

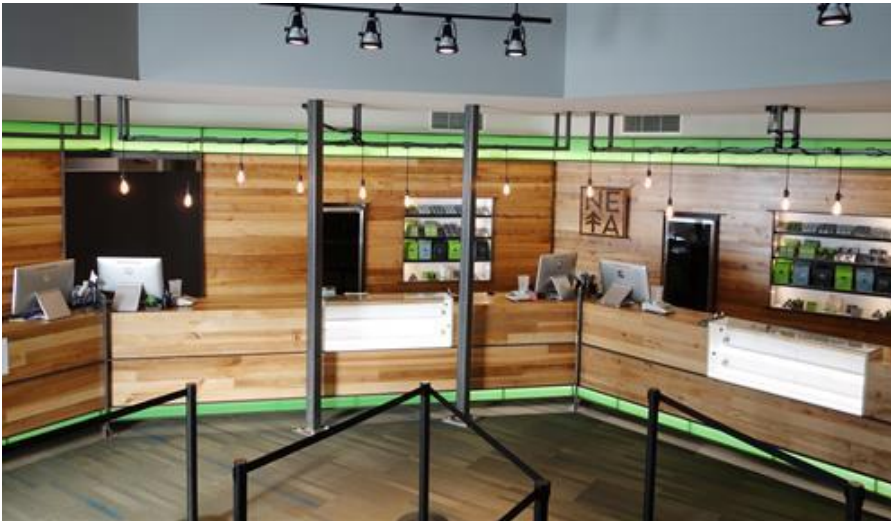
An entity authorized to:

- purchase and deliver marijuana and marijuana products from marijuana establishments
- deliver, sell and transfer to marijuana establishments and to consumers.
- May be co-located with a medical marijuana treatment center.



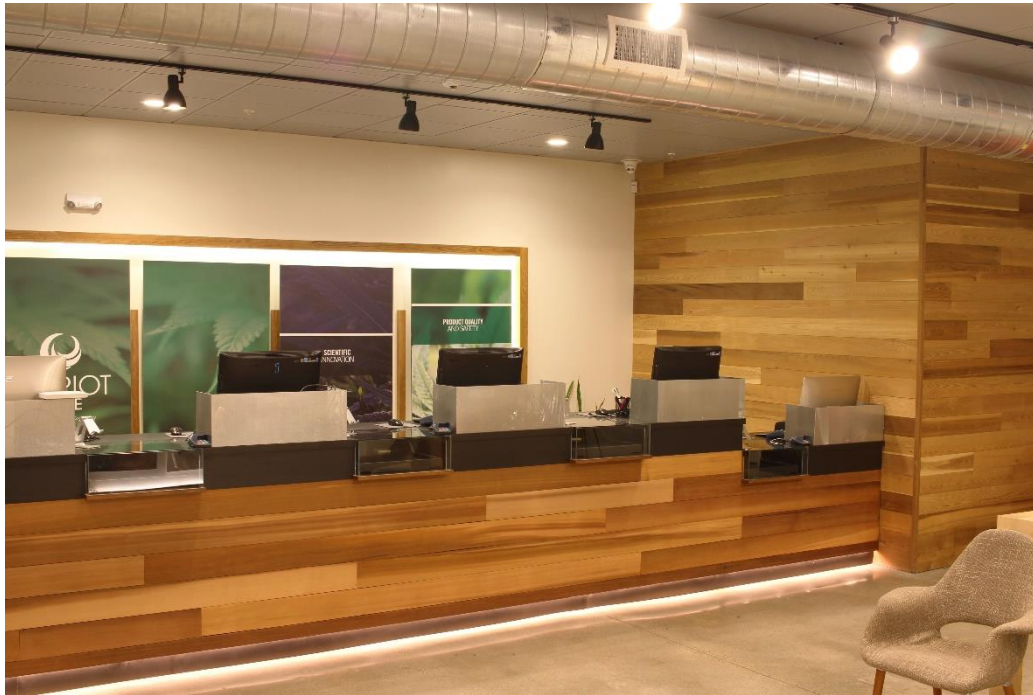
TYPES OF MARIJUANA ESTABLISHMENTS

Examples of Current Medical Marijuana Retail Locations



TYPES OF MARIJUANA ESTABLISHMENTS

Existing Medical Marijuana Retail Location



TYPES OF MARIJUANA ESTABLISHMENTS

Marijuana Research Facility

- An academic institution, non-profit corporation or domestic corporation or entity authorized to do business in the Commonwealth of Massachusetts.
- May cultivate, purchase or otherwise acquire marijuana for the purpose of conducting research regarding marijuana and marijuana products.
- A research facility may not sell marijuana cultivated under its research license



TYPES OF MARIJUANA ESTABLISHMENTS

Independent Testing Laboratory

- accredited by a third-party accrediting body or that is otherwise approved by the Commission;
- independent financially from any Medical Marijuana Treatment Center (RMD), Marijuana Establishment or licensee for which it conducts a test; and
- qualified to test cannabis or marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34.

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.

TYPES OF MARIJUANA ESTABLISHMENTS

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 has a Marijuana Transporter license.

Third Party Transporter

Does not hold another marijuana establishment license and is not registered as a registered marijuana dispensary pursuant to 105 CMR 725.000.

Existing Licensee Transporter

A Marijuana Establishment that contracts with other Marijuana Establishments to transport their marijuana and marijuana products to other establishments.



TYPES OF MARIJUANA ESTABLISHMENTS

Marijuana Micro-Business

- A microbusiness is a co-located Tier 1 marijuana cultivator and/or marijuana product manufacturer.
- May not have an ownership stake in any other marijuana establishment
- Majority of its executives or members must have been residents of Massachusetts for no less than 12 months prior to application
- Lower application fee.



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.



CURRENT TIMELINE

August 1, 2017
– Cannabis
Advisory Board
*(Already in
place)*

- Appointment of a 25-member Cannabis Advisory Board, with members appointed by a variety of officials and organizations, charged with making recommendations on guidelines, rules and regulations for the recreational use of marijuana.

September 1,
2017 – Cannabis
Control
Commission
*(Already in
place)*

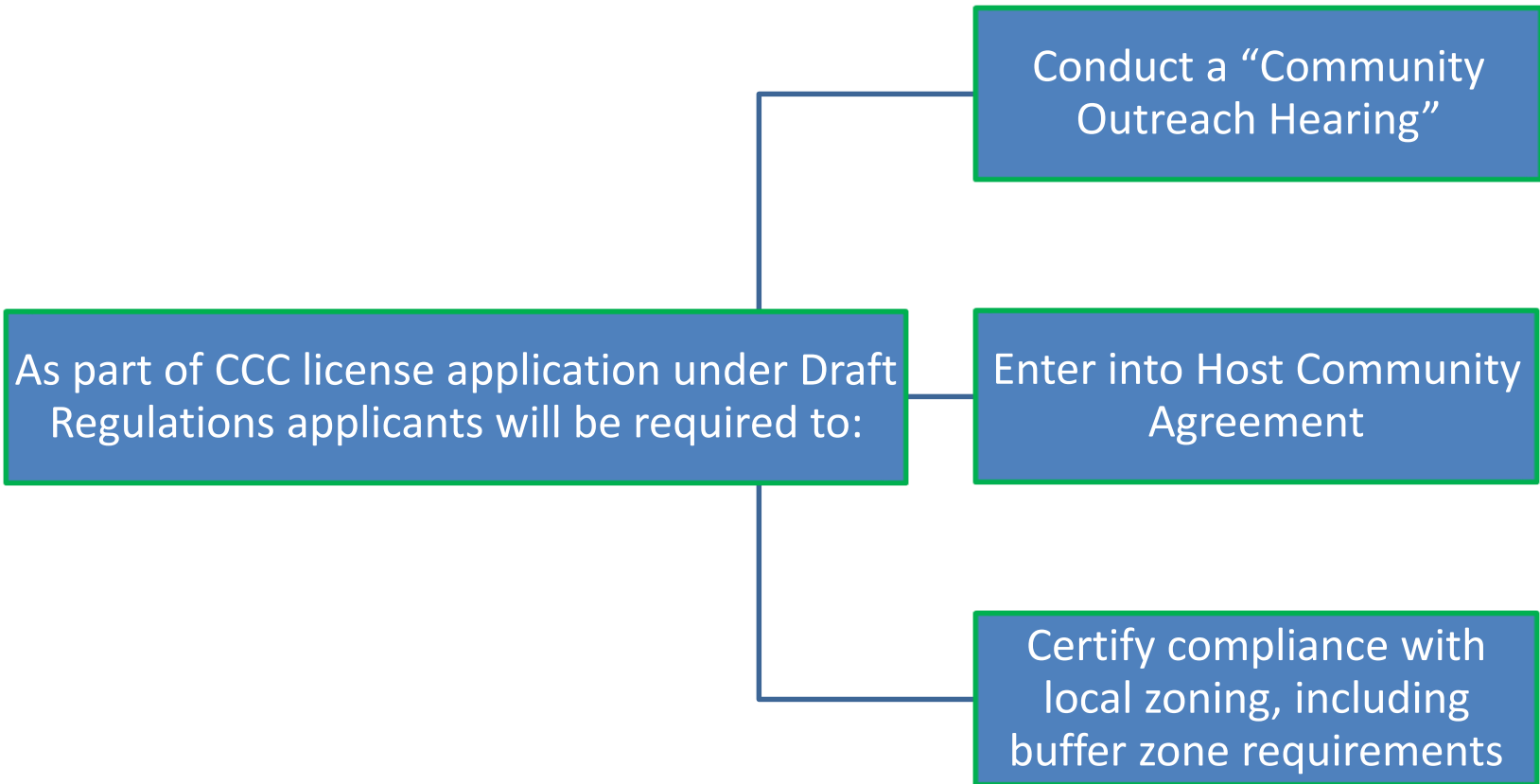
- Appointment of a five-member CCC, by the Governor, Attorney General and Treasurer.

Steven J. Hoffman, Chairman
Jennifer Flanagan
Britte McBride
Kay Doyle
Shaleen Title

CURRENT TIMELINE

March 15, 2018 – CCC Adoption of Regulations	<ul style="list-style-type: none">• Adoption of regulations, guidelines and protocols by the CCC for the issuance of licenses for recreational marijuana establishments.• <i>Final Regulations voted on March 6, 2018 – official publication March 23, 2018</i>
April 1, 2018 – Acceptance of License Applications Begins	<ul style="list-style-type: none">• Acceptance of applications by the CCC for recreational marijuana licenses not later than April 1.
June 1, 2018 – License Issuance	<ul style="list-style-type: none">• The CCC may begin issuing licenses, prioritizing applications under statutory criteria. The CCC must approve or deny applications within 90 days.

MUNICIPAL ROLE IN LICENSING BY THE CANNABIS CONTROL COMMISSION



COMMUNITY IMPACT MEETING

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

Notice

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

Copy of hearing 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 hearing 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.”

-
- 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
 - 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 HCA 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.

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*

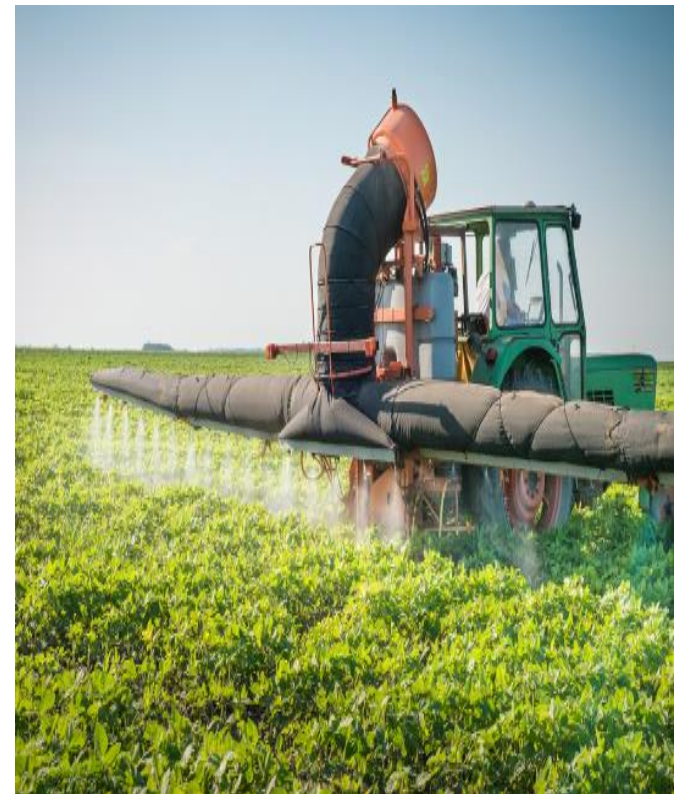
Local licensing

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

AGRICULTURAL USE EXEMPTION

Marijuana Related Uses Not “Agriculture” Under G.L. c.40A

- Chapter 351 of the Acts of 2016 included an amendment to the Zoning Act, G.L. c.40A, §3 which states that the “growing, cultivation, distribution or dispensation of marijuana” does not qualify for the agricultural exemption under the Zoning Act.
- The Act now expressly adds that municipalities are not precluded “from establishing zoning bylaws or ordinances which allow commercial marijuana growing and cultivation on land used for commercial agriculture, aquaculture, floriculture, or horticulture.”



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.

BALLOT PROCEDURES FOR LIMITATION/PROHIBITION

Chapter 94G, §3 provides the general form for a ballot question.

- The question must include the entire proposed bylaw or ordinance
- Ballot must include brief summary prepared by City Solicitor/Town Counsel making clear the number and types of marijuana establishments that will be permitted to operate.

Pursuant to G.L. c.54, §42C, a City or Town Clerk must receive notice of the ballot question, with the full legislation text and counsel summary, no less than 35 days prior to the date of the election.

The bylaw or ordinance approved by ballot must be the same as that approved by the local legislative body. (See AG Decision – Milford 1/9/18)

LIMITATION OR PROHIBITION - PROCESS

If a municipality voted against Question 4, a prohibition or limitation may be adopted simply by bylaw/ordinance through vote of the local legislative body

- This special provision will expire on December 31, 2019, after which the two-step process requiring both a ballot question and legislative approval of a bylaw will apply to all municipalities.

FORM OF BYLAW TO LIMIT OR PROHIBIT

Zoning v. General Legislation



- The language in the Act is ambiguous with respect to whether a bylaw or ordinance implementing a prohibition or limitation must be zoning or general in nature.
- The Attorney General has approved both general and zoning bylaws prohibiting adult use marijuana establishments, but has advised that a zoning bylaw should be adopted.
- Given the lack of clarity on this issue, municipalities may wish to consider adopting both a general and a zoning bylaw imposing a prohibition/limitation.

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, imposing a temporary limit on the ability of applicants to locate marijuana establishments within a municipality, may be a powerful tool available to municipalities to allow additional time to plan for regulation of marijuana uses.
- The Attorney General has approved moratoria in many municipalities through December 31, 2018.
- The CCC municipal guidance indicates that it will honor moratoriums of a reasonable length.

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, an increase from the previous 2%.
- If a municipality has already accepted §3, a new vote of the legislative body will be required in order to increase a sales tax rate up to 3%.

QUESTIONS?



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