

AN ACT TO ENSURE SAFE ACCESS TO MARIJUANA

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AN ACT TO ENSURE SAFE ACCESS TO MARIJUANA

- On November 8, 2016, Massachusetts voters approved Question 4 legalizing the recreational 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.
- The Act addresses regulation of marijuana on both state and local levels including:
 - the timeline for implementation of the Act;
 - personal use;
 - enforcement;
 - local control;
 - regulation of marijuana products; and
 - taxation;



THE CANNABIS CONTROL COMMISSION

- The Act creates a comprehensive oversight for all marijuana uses under the appointed Cannabis Control Commission (the “CCC”) (similar to the Alcoholic Beverage Control Commission) which will implement and enforce regulations governing the cultivation, sale, and testing of marijuana.
- The CCC will include a law enforcement unit that will be responsible for enforcing regulations, conducting compliance checks, and investigating violations.
- These regulations will adopt procedures for the issuance, transfer and renewal of licenses to operate marijuana establishments.

PERSONAL USE OF NON-MEDICAL MARIJUANA

The following personal use of recreational marijuana is permitted under the Act:

- “Consumers”, i.e., persons 21 years of age or older may possess 1 ounces or less of marijuana.
- Within a person’s “primary residence,” a person may possess up to 10 ounces of marijuana and any marijuana produced on the premises for personal use by not more than 6 marijuana plants.
 - If there is more than one grower at the residence, there may be up to 12 plants cultivated on the premises.
- A person may give away or transfer without “remuneration” to a persons 21 years or older up to 1 ounce of marijuana, of which no more than 5 grams may be in the form of marijuana concentrate, provided that such transfer is not advertised or promoted to the “public.”
- 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

The following are significant limitations imposed on personal use of recreational marijuana under the Act:

- Cultivation and processing marijuana plants may not be visible from a public place.
- Marijuana or marijuana products exceeding 1 ounce within the person's place of residence must be secured by a lock.
- 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 but is generally understood to include areas both privately and publicly owned to which the public have rights of access by invitation, either express or implied.
- Open containers of marijuana or marijuana products are prohibited in the passenger area of any motor vehicle.
- Municipalities may prohibiting the possession or consumption of marijuana within any buildings owned or leased by them.



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.

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.
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.• <u>IMPORTANT</u>: The CCC will be governed by the zoning bylaws or ordinances <u>in effect at the time of application</u>.
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.

THE CANNABIS CONTROL COMMISSION

Under the Act licenses shall be granted if

- the establishment meets certain requirements **and**
- the CCC is not notified by the municipality in which the proposed marijuana establishment will be located that the proposed establishment is not in compliance with an ordinance or by-law that is
 1. Consistent with the Act **and**
 2. In effect at the time of application.

THE REGULATION & TAXATION OF MARIJUANA ACT

"Marijuana establishment" is broadly defined in G.L. c.94G, s.1 as “a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.”



THE REGULATION & TAXATION OF MARIJUANA ACT

Types of Marijuana Establishments (G.L. c.94G, s.1)

- "Marijuana cultivator", a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.
- "Marijuana retailer", an entity licensed 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.
- "Marijuana product manufacturer", an entity licensed 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.
- "Independent testing laboratory", a laboratory that is licensed by the Cannabis Control Commission and is: (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Cooperation mutual recognition arrangement or that is otherwise approved by the commission; (ii) independent financially from any medical marijuana treatment center or any licensee or marijuana establishment for which it conducts a test; and (iii) qualified to test marijuana in compliance with regulations promulgated by the commission pursuant to General Laws chapter 94G.

CCC REGULATIONS

The Cannabis Control Commissions' regulations will address:

- Requirements for licensing and registration of Marijuana Establishments;
- Inspections and enforcement;
- Seed to sale tracking system;
- Minimum security requirements for licensees;
- Requirements for potency and dosing limitations;
- Health and safety standards for cultivation, processing, manufacturing and distribution;
- Requirements for the packaging of marijuana and marijuana products, which shall include special packaging requirements to protect children from ingesting marijuana;
- Requirements for labeling of packaging;
- Procedures and policies to promote and encourage full participation in the regulated marijuana industry by farmers;
- Requirements for advertising, marketing and branding;
- Restrictions on marketing, branding and advertising with respect to marijuana, marijuana products and marijuana accessories, including prohibiting marketing or advertising designed to appeal to children; and
- Requirements for safe disposal.

LOCAL CONTROL — REGULATION, PROHIBITION

Ordinances and Bylaws Regulating Time, Place and Manner

- Municipalities may regulate the “time, place and manner” of marijuana establishment operations and may adopt ordinances and bylaws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not “unreasonably impracticable.”
 - An ordinance or bylaw would be “unreasonably impracticable” under the Act if “that the measures necessary to comply with the regulations, ordinances or by-laws adopted pursuant to this chapter 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)

LOCAL CONTROL — REGULATION, PROHIBITION

Ordinances and Bylaws Regulating Time, Place and Manner

- 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, and
 - establish a civil penalty for violation of an ordinance or bylaw.
- Standard practices for adoption of ordinances or bylaws will apply (G.L. c.40A, sec.5).

LOCAL CONTROL — REGULATION, 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:
 - (i) prohibit the operation of one or more types of marijuana establishments;
 - (ii) 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; or
 - (iii) 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.

LOCAL CONTROL — REGULATION, PROHIBITION

- *The procedure for adopting a bylaw or ordinance to prohibit or limit the number of recreational marijuana establishments has significantly changed.*
- 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 an ordinance or bylaw 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.

LOCAL CONTROL — REGULATION, PROHIBITION

- Chapter 94G, §3 now provides the general form for a ballot question:
 - The question must include the entire proposed bylaw or ordinance and also directs that the City Solicitor/Town Counsel prepare a brief summary that makes clear the number and types of marijuana establishments that will be permitted to operate.
- As with all ballot questions, 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.
- For municipalities subject to this two-step approval process for implementing a prohibition or limitation, it is important that the bylaw or ordinance approved by ballot be the same or substantially similar as that approved by the local legislative body in order to avoid any challenge to its validity.

LOCAL CONTROL — REGULATION, PROHIBITION

- If a municipality **voted against** Question 4, a ballot question is not required and the ordinance or bylaw may be adopted by the local legislative body.
- This special provision will expire on December 31, 2019, after which the two-step process requiring a ballot question and legislative approval will apply to all municipalities.

LOCAL CONTROL — REGULATION, PROHIBITION

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.
- We recommend that a municipality consider adopting both a general and a zoning bylaw or ordinance to prohibit or limit recreational marijuana establishments.
 - A general bylaw or ordinance may serve to protect the Town from zoning issues such as zoning freezes and “grandfathering” of existing uses.
 - A lower quantum of vote is also required to pass a general bylaw.

LOCAL CONTROL — REGULATION, PROHIBITION

- The Attorney General has already approved zoning bylaws imposing prohibitions and limitations on recreational marijuana establishments.
- The Attorney General has also approved a similar general bylaw, but has recommended and taken the position that the towns should adopt a zoning bylaw as well.
- This is an evolving issue that will involve different policy considerations.

LOCAL CONTROL — REGULATION, PROHIBITION

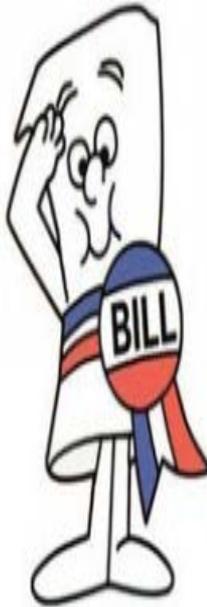
Petition for Question on State Ballot to Permit Marijuana “Cafés” – An “Opt-In” Procedure

- 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,
 - Must be presented to the voters of the city or town at the next biennial state election
 - Question of whether to allow the consumption of marijuana and marijuana products on the premises where they are sold (i.e., so-called marijuana “cafés”).
- There is no timeline provided in the law for this type of petition; likely requirement will be for petition to be filed with the Secretary of the Commonwealth no later than the first Wednesday in August.



MEDICAL-USE MARIJUANA

- The Act also makes a number of significant changes to the regulation of medical-use marijuana including the following:
 - The eventual repeal of chapter 369 of the Acts of 2012, “An Act for the Humanitarian Medical Use of Marijuana.”
 - The adoption of a new Chapter 94I – “Medical Use of Marijuana.”
 - The transfer of the oversight and regulation of medical-use marijuana to the CCC.
 - The continuation of the Department of Public Health regulating medical-use marijuana in the short-term under its existing regulatory scheme, 105 CMR 725, until the transfer of oversight and regulation is complete.
 - This transfer must occur on or before December 31, 2018.



LOCAL CONTROL — REGULATION, PROHIBITION

Conversion of Existing Marijuana Treatment Centers

- The prior law required a city or town to allow a recreational marijuana establishment to be located in “any area in which a medical marijuana treatment center is registered to engage in the same type of activity.”
- The new Act rescinded that requirement, but added a new requirement prohibiting a zoning bylaw or ordinance from preventing a medical marijuana establishment, licensed by the Commonwealth on or before July 1, 2017, from converting to a recreational marijuana establishment “engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment engaged in the same type of activity.”
- Such a conversion may be prohibited if the municipality has adopted a total prohibition of all recreational marijuana establishments by ordinance or bylaw.

LOCAL CONTROL — REGULATION, PROHIBITION

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 center and 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 preclude renegotiation of a HCA at the end of the initial five year term.
- The municipality is required to document its costs.

LOCAL CONTROL — REGULATION, PROHIBITION

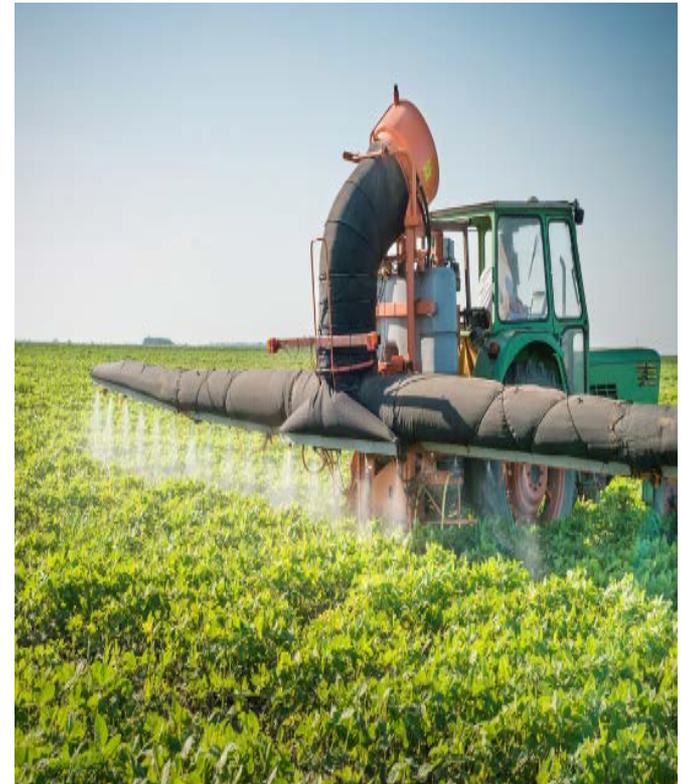
Zoning Moratoria

- The emerging area of marijuana regulation presents many policy and planning issues for municipalities. A zoning moratorium, which would impose a temporary limit on the ability of applicants to locate marijuana establishments within a municipality, may be a powerful tool available to municipalities to consider how a community will regulate marijuana uses.
- The Attorney General recently approved moratoria in many municipalities through December 31, 2018.
- Over one-third of municipalities have already adopted a moratorium, ban or limitation on marijuana establishments, limiting the number of availability communities in which to seek a license. Thus, there is a potential risk of an industry-mounted challenge to an adopted moratorium as an prohibited ban under the Act.
- We recommend that municipalities have a bylaw or ordinance in place before April 1, 2018 in order to avoid a potential challenge to a zoning moratorium.

LOCAL CONTROL — REGULATION, PROHIBITION

Marijuana Related Uses Not “Agriculture”

- 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, however, 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.”



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 between 2% - 3%.***

QUESTIONS?



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