

Recreational Marijuana Legalized – Now What?

On November 8, 2016, Massachusetts's voters approved a **citizen's petition** to legalize the recreational use of marijuana by a margin of 7.2%. The law will allow individuals 21 years or older, to use, possess, and cultivate, marijuana in established amounts commencing on December 15, 2016. In addition, starting on October 1, 2017, the Cannabis Control Commission ("CCC"), a newly established state agency, must begin accepting applications from commercial marijuana businesses, including cultivators, testing facilities, product manufacturers, and retailers ("marijuana establishments"). The CCC must act on all applications within 90 days of receipt. Therefore, the first marijuana establishment will be authorized to open its doors no later than January 2, 2018.

Although the CCC will be in charge of all licensing, the statute appears to leave a significant role for municipalities in the regulation of marijuana establishments. Accordingly, we have outlined some of the ways that communities may attempt to regulate marijuana establishments. This list is not intended to be exhaustive, however, and communities with questions should contact their counsel.

Temporary Moratorium

As with medical marijuana, communities may elect to place a temporary moratorium on all marijuana establishments within the municipality. The CCC is a new state agency and is required to promulgate regulations by September 15, 2017. These regulations will be essential for municipalities to understand the marijuana establishment licensure program. The new regulations applicable to marijuana establishments will raise novel and complex legal, planning, and public safety issues. Communities may need time to consider and address these issues, as well as the impacts of the CCC's regulations. It is therefore likely that the Attorney General will approve a moratorium for zoning bylaws, as she did with medical marijuana moratoria in the past. The Attorney General will answer that question shortly upon her review of the moratorium that the Ashland Town Meeting recently approved.

Limits on the Number of Licenses/Prohibition on Licenses

There are no restrictions on the number of licenses the CCC may issue in any one community. That said, municipalities may adopt ordinances and bylaws that limit the number of "marijuana establishments in the city or town." *M.G.L. c.94G, §3(a)(2)*. In certain situations, limiting the number of licenses to below an established threshold would require the municipality to adopt the ordinance or bylaw "by a vote of the voters" of the city or town. Such a vote would be required in the following instances:

- (1) The ordinance or bylaw prohibits the operation of one or more types of marijuana establishments within the city or town;
- (2) The ordinance or bylaw limits the number of marijuana retailers to fewer than 20 percent of the number of package store licenses issued within the city or town; and
- (3) The ordinance or bylaw limits the number of any type of 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.

As noted, a "marijuana establishment" is defined as a "marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business." *M.G.L. c.94G, §1(j)*. In the absence of a regulation providing clarification, it is likely that these

are the “types” of establishments that may be prohibited through a “vote of the voters.”

Health and Safety Regulations

Under the law, municipalities may also adopt ordinances and bylaws that impose “reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter.” *M.G.L. c.94G, §3(a)* (emphasis added).

An ordinance or bylaw containing such safeguards will be considered “unreasonably impracticable” if “measures necessary to comply [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.” *Id.* at §1(p).

Of course, it will be tricky to adopt ordinances or bylaws that are not in conflict with regulations that have not yet been issued. So, for now, communities should probably consider limiting their safeguards to those that are specifically authorized in the new law: (1) ordinances and bylaws that restrict cultivation, processing and manufacturing practices that constitute a public nuisance; (2) ordinances and bylaws that establish reasonable restrictions on public signs related to marijuana establishments; and (3) ordinances and bylaws that establish a civil penalty for violations. *M.G.L. c.94G, §3(a)(3)-(5)*.

Zoning Bylaws

Municipalities may adopt zoning ordinances and bylaws limiting the location of marijuana establishments, “except that zoning ordinances [or bylaws] shall not prohibit placing a marijuana establishment which cultivates, manufactures or sells marijuana or marijuana products in any area in which a medical marijuana treatment center is registered to engage in the same type of activity.” *M.G.L. c.94G, §3(a)(1)*.

Local Tax

M.G.L. c.64N, §3 allows for collection of a local sales tax, at a rate of not greater than 2 percent of the total sales price, upon the sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the municipality to anyone other than a marijuana establishment, excluding medical marijuana sales.

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