

Guidance on Types of Marijuana Establishment Licenses

The following is not legal advice. Please consult an attorney if you have any questions regarding the law regarding marijuana for adult use.

The Marijuana Acts and the draft regulations create different kinds of marijuana establishments. Unlike a Registered Marijuana Dispensary (“RMD”) (also known as a “medical marijuana treatment center”), which is required to cultivate, process and retail its own marijuana and marijuana products for medical use, 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 Cultivators

A Marijuana Cultivator may cultivate, process and package marijuana, to transfer and deliver marijuana products to marijuana establishments, but not to consumers. A Craft Marijuana Cooperative, which will be discussed in further detail below, is a type of Marijuana Cultivator. Cultivators may select what tier they will be in, which will affect their application and licensing fees. The following options are available, but no licensee may have a total canopy of more than 100,000 square feet.

Canopy means an area to be calculated in square feet and measured using clearly identifiable boundaries of all areas(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries, canopy may be noncontiguous, but each unique area included in the total canopy calculations shall be separated by an identifiable boundary which include, but are not limited to: interior walls, shelves, greenhouse walls, hoop house walls, garden benches, hedge rows, fencing, garden beds, or garden plots. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

Tiers of Marijuana Cultivator

Each licensee (except a craft marijuana cooperative) may have three licenses, but 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.		

Tier Management

Expansion: A Marijuana Cultivator may submit an application to change the tier in which it is classified. A Marijuana Cultivator may change tiers to either expand or reduce production. If a Marijuana Cultivator is applying to expand production, it must demonstrate that while cultivating at the top of its production tier, it has sold 85% of its product consistently over the six months preceding the application for expanded production.

Relegation: At the time of license renewal process for Marijuana Cultivators, the Commission will review the records of the Marijuana Cultivator during the six months prior to the application for renewal. The Commission may reduce the licensee's maximum canopy to a lower tier if the licensee sold less than 70% of what it produced.

Craft Marijuana Cooperative

A Craft Marijuana Cooperative is a type of Marijuana Cultivator which may cultivate, obtain, manufacture, process, package and brand marijuana and marijuana products to deliver marijuana to Marijuana Establishments, but not to consumers, and must consist of:

- Massachusetts residents who have formed a limited liability company, limited liability partnership, or a cooperative corporation;
- A business may only have one Craft Marijuana Cooperative license;
- Members of a Craft Marijuana Cooperative may not have a controlling interest in any other marijuana establishment;
- A Craft Marijuana Cooperative is not limited to a particular number of cultivation locations, but is limited to a total canopy of 100,000 square feet and three locations for activities authorized for marijuana product manufacturers;
- One member of the Craft Marijuana Cooperative must have filed a Schedule F tax form (reporting farm income) in the past five years.
- The Craft Marijuana Cooperative must operate according to the seven cooperative principles published by the International Cooperative Alliance in 1995.

Marijuana Product Manufacturer

A Marijuana Product Manufacturer is 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

A Marijuana Retailer is an entity authorized to purchase and deliver marijuana and marijuana products from Marijuana Establishments and to sell or otherwise transfer marijuana and marijuana products to Marijuana Establishments and to consumers.

Please note that similar to marijuana for medical use, edible marijuana products for adult use shall not be considered food and therefore Marijuana Retailers would not be subject to inspection by local Boards of Health under 105 CMR 590 unless local regulations requiring such inspections are promulgated.

A Marijuana Retailer provides a retail location which may be accessed by consumers 21 years of age or older or, if the retailer is co-located with a RMD by individuals who are registered qualifying patients with the Medical Use of Marijuana Program with a registration card.

Marijuana Transporter

A Marijuana Transporter is an entity that 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 Research Facility

A Marijuana Research Facility is 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 it has cultivated.

Laboratories

Independent Testing Laboratory:

An Independent Testing Laboratory is 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:

A Standards Testing Laboratory is 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.

Microbusiness

A Microbusiness is a co-located Tier 1 Marijuana Cultivator, and/or Marijuana Product Manufacturer limited to purchase 2,000 pounds of marijuana from other Marijuana Establishments in one year.

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 Microbusiness license.

Application fees and license fees for Marijuana Microbusinesses shall be set at 50% of the combined sum of the application fees and license fees for cultivation and/or, manufacturing.

Social Consumption & Delivery

Regulations regarding licenses for social consumption and delivery to consumers have been delayed for further study. The Commission anticipates drafting regulations regarding licenses for this category in February 2019. In the meantime, municipalities wishing to authorize social consumption in their community must follow the ballot process established in G.L. c.94G §3(b) for the election in November 2018.

Please note that legislation has been filed to clarify the ballot process (Bill H.4284, which may be reviewed at <https://malegislature.gov/Bills/190/H4284>) and this guidance will be updated if the legislation is enacted.

Questions? If you have additional questions, please contact the Commission at (617) 701-8400 or CannabisCommission@State.MA.US.