

## **GUIDANCE ON LOCAL EQUITY**

### **Public Comment Period**

Please review and submit feedback on this draft guidance. The public comment period ends on 8/6/18. All comments should be submitted to [CannabisCommission@Mass.Gov](mailto:CannabisCommission@Mass.Gov).

### **Purpose and Process**

The following recommendations were created by the Cannabis Control Commission (Commission) to assist municipalities in creating equitable cannabis policies to mirror the Social Equity program established by the Commission under state law and in response to requests from local elected officials and the Cannabis Advisory Board. As the Commission strives to create a fair and diverse industry across the Commonwealth, collaboration between state and municipal government will be critical to succeeding.

The Commission is charged by state law (St. 2017, ch.55) with ensuring the meaningful participation in the cannabis industry of communities disproportionately affected by the enforcement of previous cannabis laws, small businesses, and companies led by people of color, women, veterans, and farmers.

Broadly, the Commission refers to these statutory mandates as its efforts to create an equitable industry. If there is evidence of discrimination or barriers to entry in the regulated marijuana industry, state law directs the Commission to take remedial measures to address those hurdles.

This guidance is not legal advice, but supplements the Commission’s existing [Guidance for Municipalities](#). If municipalities have legal questions regarding marijuana laws in the Commonwealth, they are encouraged to consult counsel.

### **Background**

The possession and use of cannabis became legal in the Commonwealth for adults over 21 years old on December 15, 2016. The Commission fulfilled its statutory obligation under Chapter 55 to issue regulations governing adult-use Marijuana Establishments by filing final regulations on March 9, 2018.

M.G.L. ch. 94G, §3 permits a city or town to adopt ordinances and by-laws that impose reasonable safeguards on the operation of Marijuana Establishments, provided that they are not unreasonably impracticable<sup>1</sup> and are not in conflict with state law or regulations.

Municipalities may also institute a ban. These recommendations are provided for municipalities that have opted not to impose a ban, including those that are engaged in planning and decision-making while a temporary moratorium is in place, or those considering rescinding a ban.

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<sup>1</sup> Unreasonably impracticable means that the local laws cannot “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.” M.G.L. Ch. 94G § 1

## Overview

While each municipality is different, a useful overall approach to the local control process is to answer the following questions, with an emphasis on the city or town's local values and meeting the law's equity goals.

- Are caps on licenses necessary?
- What license types will be allowed in the municipality?
- Should a local excise tax be authorized?
- How should each license type be zoned?
- What municipal entity or entities will oversee the prospective licensee process?
- What process will prospective licensees need to follow, and what is the timeline for that process?
- How will prospective licensees be selected to move forward, and what municipal entity or entities will negotiate the host community agreement with them?

### *Are caps on licenses necessary?*

Massachusetts law imposes no statewide cap on the number of marijuana licenses that may be issued. Instead, the Commission reviews each application and determines whether the application satisfies the requirements of the Commission's regulations on adult-use cannabis, 935 CMR 500 and the applicant is suitable or unsuitable for licensing. Such an approach leaves room for businesses of all sizes, rather than forcing a large number of qualified applicants to compete for a small number of licenses – a process that tends to perpetuate existing inequities.

The Commission will not issue a license to an applicant unless (a) the applicant is compliant with local bylaws and ordinances; (b) the applicant has held a community outreach meeting within six months of applying for licensure; and (c) the applicant and municipality have executed a host community agreement.

As the municipal guidance previously issued by the Commission outlines, there are several options available to communities to determine if and how cannabis commerce fits into the fabric of the community. It is a common misconception that communities must act quickly and comprehensively now to determine the future of cannabis sales in the community. In order to open in the community, the businesses will need to satisfy the regulatory requirements of local control, including a signed agreement with the community.

The Commission respects the local control that is granted to municipalities under M.G.L. ch. 94G and encourages communities to consider how cannabis commerce fits into their long-term municipal planning processes. This may include limiting the number and type of Marijuana Establishments, but there is no requirement that communities take that action. For those communities that choose not to impose limitations, the statute provides that municipalities are not required to permit a number of retail Marijuana Establishments in excess of the number that is equal to 20% of liquor licenses issues pursuant to M.G.L. ch. 138, §15 (commonly known as "package stores").

### *What license types will be allowed in the municipality?*

State law and Commission regulations create the following license types: cultivators, product manufacturers (sometimes known as "processors" or "producers" of cannabis oils or concentrates),

retailers, transporters, testing laboratories, research facilities, microbusinesses, and craft cooperatives. More details about each license type can be found in the Commission's [Guidance on Types of Marijuana Establishment Licenses](#).

The Commission created a wide variety of license types, all authorized under state law, to encourage the participation businesses of all sizes. Each license type involves distinct areas of business operations that create jobs in distinct fields. For example, independent testing labs may create jobs for scientists, while microbusinesses and cooperatives may create jobs for those with expertise in agriculture, and transporters may create jobs for drivers.

To encourage an industry that allows for participation from various communities, the Commission recommendation is to allow prospective applicants seeking each type of license to begin the process and hold a community outreach meeting, where residents could raise specific concerns. Applicants may then take the opportunity to address those concerns and move forward in the local selection process. For municipalities that especially value small businesses, it may be appropriate to only allow microbusinesses and craft cooperatives rather than all cultivators and manufacturers.

The Commission is collecting information relative to social consumption and delivery licenses and intends to have draft regulations prepared in February 2018. Under state law, the local controls outlined under M.G.L. ch. 94G, §3 apply to any Marijuana Establishment, including social consumption facilities and delivery businesses if those licenses are authorized under the Commission's regulations.

#### *Should a local tax be authorized?*

A municipality may adopt a tax of up to three percent on adult-use cannabis sales by a vote of its legislative body. In many state and local jurisdictions, Massachusetts included, a portion of cannabis tax revenue is earmarked for restorative justice, jail diversion, workforce development, industry specific technical assistance, and mentoring services. Equity goals may similarly be supported by designating part of the local tax or community impact fee, if adopted as part of the host community agreement, for similar local programs.

#### *How should each license type be zoned?*

According to feedback from the Cannabis Advisory Board Subcommittee on Market Participation and direct feedback to the Commission, real estate is one of the primary hurdles for small businesses and businesses owned by people from marginalized communities. When municipalities impose overly strict zoning rules and large buffer zones, they sharply limit the number of parcels available to potential operators. This favors large businesses with substantial financial resources that can outbid other potential operators and overpay for a lease or purchase of property—often at the expense of smaller, local companies—and tends to direct large rewards to a small handful of landlords and property owners.

Overly strict local zoning in other states has also led to complaints that cannabis businesses were crowded into small sections of a municipality, often areas with a vulnerable or low-income population. One study examined the locations of medical marijuana dispensaries in Los Angeles and report that dispensaries were located in primarily commercially zoned areas with greater road access, density of on- and off-premise alcohol outlets, and percentage of Hispanic residents (Thomas and Freisthler, Examining the locations of medical marijuana dispensaries in Los Angeles, Drug Alcohol Review, 2017).

Please note that Chapter 351 of the Acts of 2016 exempted the cultivation of marijuana from the agricultural exemption in the Zoning Act, M.G.L. ch. 40A §3, therefore retaining local control over the placement of Marijuana Establishments. The law allows, but does not mandate, municipalities to pass bylaws and ordinances governing the “time, place, and manner” of Marijuana Establishments (cultivators, retailers, manufacturers, testing labs, and any other licensed cannabis-related businesses) as well as businesses dealing with cannabis accessories. Additional municipal action is not, however, a requirement, meaning that a municipality could determine that a proposed cannabis-related use falls under an existing use authorized by its bylaws or ordinances.

Therefore, Commission recommendation is to zone cannabis businesses based on the nature of their primary business operations. It may be most appropriate, for example, for cultivators, microbusinesses, and cooperatives to be zoned, respectively, as agricultural, industrial, and manufacturing businesses, while cannabis retailers would be zoned in the same manner as any other retailer. Manufacturers, as defined as a Marijuana Establishments, may be appropriate for multiple zones, as they may encompass small microbusinesses or companies creating edibles in commercial kitchens.

If a community has concerns about the new types of businesses, the community outreach meeting required by the Commission for licensure gives community residents and prospective applicants a chance to discuss their concerns and formalize the solutions in a host community agreement (see next section).

State law establishes a 500-foot buffer around K-12 schools. A municipality may choose to reduce the size of that buffer. It is unclear whether buffer zones around other uses, such as parks, are legally permissible. The Commission suggests that additional buffer zones may not be necessary and cautions communities against acting arbitrarily.

The Commission has made the prevention of diversion of cannabis to individuals under 21 a priority. Current studies do not show any evidence that medical marijuana dispensaries increase youth access and use of cannabis. A recent study showed that overall, the availability of dispensaries within 5- and 25-mile buffers were not associated with recent or current adolescent cannabis use (Shi, Yuyan, *The availability of medical marijuana dispensaries and adolescent marijuana use*, Preventive Medicine, 2016).

A prominent meta-analysis of studies estimating the effects of medical marijuana laws reported that none of the studies found significant changes in past-month marijuana use following medical marijuana law enactment compared to other states (Sarvet et al., *Medical marijuana laws and adolescent marijuana use in the United States: a systematic review and meta-analysis*, Addiction, 2017).

While there have been no definitive studies on the impact of the presence of adult-use cannabis dispensaries on youth access, the Commission has acted to ensure that licensees understand their responsibilities. The regulations issued by the Commission include extensive provisions around labeling, packaging and marketing, as well as Marijuana Establishment employee training, positive identification checks upon entry to a Marijuana Establishment and inspectional protocols that include a spot check and “secret shopper” program. In addition, the Commission is launching a statewide campaign to educate the public about the safe use of marijuana and the risks associated with failing to use it safely. Preventing diversion to children and adolescents is part of this campaign.

Research suggests that marijuana dispensaries are not associated with increased crime. One study found that the density of medical marijuana was unrelated to property and violent crimes in local areas (Freisthler et al., *A micro-temporal geospatial analysis of medical marijuana dispensaries and crime in Long Beach California*, *Addiction*, 2016). However, the Commission also acknowledges that crime occurs at Marijuana Establishments as it does at any similar business.

With this in mind, the Commission adopted – and will enforce – stringent security protocols intended to ensure the safety and security of the staff and consumers at Marijuana Establishments as well as the general public in the areas around Marijuana Establishments. Security provisions include requirements that licensees share safety plans with local law enforcement and emergency responders; cameras that record 24 hours per day; perimeter alarm systems; and incident reporting protocols. The Commission also requires the seed-to-sale tracking of all cannabis and cannabis products offered by licensed Marijuana Establishments in Massachusetts.

Like overly restrictive zoning, buffer zones between Marijuana Establishments prolong inequities by exacerbating the scarcity of appropriate real estate. If buffer zones between Marijuana Establishments are enacted, municipalities may consider waiving or reducing the size of the buffer for state-certified economic empowerment applicants or for state-designated participants in the Commission’s Social Equity Program. For more information on these programs, see the Commission’s [Summary of Equity Provisions](#).

*What municipal entity or entities will oversee the prospective licensee process, select licensees to move forward, and negotiate host community agreements?*

Once a municipality has established zoning and a selection process, the Commission recommends that it delegate local decision-making authority and accountability related to Marijuana Establishments to one entity. One option is to designate a city or town’s local planning board, liquor licensing authority, or other existing entity, so long as the body’s existing processes are adjusted to allow for the requirements in the state’s marijuana laws – specifically the community outreach meeting and the negotiation of a host community agreement.

An alternative option is to follow the state-level model and create a new board, appointed by local elected officials, whose members have expertise in areas public safety, public health, business, social justice, and local regulation. The board should be vetted for any conflicts of interest and its decision-making, goals, and instructions should be clear and transparent.

To allow for checks and balances, a municipality may prefer to designate one entity to oversee the selection process and another to negotiate the host community agreements.

*What process will prospective licensees need to follow, and what is the timeline for that process?*

Section 56 of Chapter 55 requires the Commission to prioritize review and licensing decisions for prospective licensees who demonstrate experience in or business practices promoting economic empowerment in communities disproportionately impacted by high rates of arrest and incarceration for drug offenses, in addition to registered marijuana dispensaries. There are 123 applicants that qualify as economic empowerment applicants certified by the Commonwealth. In accordance with the Commission’s mandate to promote and encourage full participation in the adult-use cannabis industry by those disproportionately harmed communities, the Commission’s recommendation is for municipalities to prioritize review for these economic empowerment applicants at the local level as well. In other words,

those prospective licensees should be reviewed for suitability before others. Some municipalities in Massachusetts are considering prioritizing applicants by allowing them to move forward exclusively for a certain period of time. For example, a municipality may consider only economic empowerment applicants and applicants who are local residents for the first six months.

Regardless of the entity or entities designated to oversee the selection of Marijuana Establishments, the Commission recommends that it begin by designing an objective selection process and clear timeline for prospective licensees. For example, a certain period to demonstrate intent to apply, a certain period for community outreach meetings, a certain period to discuss concerns and ways to address those concerns with the overseeing entity, a certain period for applying objective criteria and selecting which applicants proceed, and finally, a set period for negotiating a host community agreement that reflects the concerns raised and plan to address them. The timeline should include deadlines for both the applicant and the entity overseeing the process.

In order to make the local control process more accessible, the Commission recommends utilizing local media, social media, and partnerships with community organizations to disseminate the information as broadly as possible. Local forums with question-and-answer sessions will allow the municipality to announce the process as well as interact with prospective licensees and anticipate their questions.

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## **SUMMARY: Recommendations for Creating an Equitable Industry**

Given the unique opportunity to build a large and lucrative industry from scratch, the Commission encourages municipalities to build the licensee selection process in a way that prioritizes the community's individual needs and the Commonwealth-wide commitment to an equitable industry and economic justice. Below is a list of recommendations from this guidance, the state-level licensing process, and other jurisdictions nationwide.

- **ALLOW VARIOUS TYPES OF BUSINESSES**: In order to encourage an industry that allows for participation from various communities, the Commission recommends allowing prospective applicants seeking each type of license to begin the process and hold a community outreach meeting, where residents could raise specific concerns. Applicants may then take the opportunity to address those concerns and move forward in the local selection process. For municipalities that especially value small businesses, it may be appropriate to only allow microbusinesses and craft cooperatives rather than all cultivators and manufacturers.
- **CONSIDER WHETHER CAPS ARE NECESSARY**: Instead of instituting a cap on the number of businesses, begin by determining the number of retailers equal to 20 percent of the number of the number of liquor licenses issued pursuant to M.G.L. ch.138, §15 (commonly known as “package stores”). After that number of retailers are open, a municipality may consider pausing to collect data, engage with citizens, and decide whether to permit additional retailers. It is a common misconception that a municipality must take action to ban or proactively cap the number of licenses to prevent an unlimited number of businesses from opening.
- **ZONING**: Communities should give serious consideration to zoning marijuana businesses based on the nature of their primary business operations. State law establishes a 500-foot buffer around K-12 schools; a municipality may choose to reduce the size of that buffer. The Commission suggests that additional buffer zones may not be necessary and cautions communities against acting arbitrarily. If a community has concerns about the new types of businesses, the community outreach meeting, required by the Commission for licensure, gives community residents and prospective applicants a chance to discuss their concerns and formalize the solutions in a host community agreement
- **HOST COMMUNITY AGREEMENTS**: Once a community establishes zoning and a selection process, the Commission recommends that it delegate local decision-making authority and accountability related to Marijuana Establishments to one entity, either an existing entity or a new entity. The entity should be vetted for any conflicts of interest and its decision-making, goals, and instructions should be clear and transparent. To allow for checks and balances, a municipality may prefer to designate one entity to oversee the selection process and another to negotiate the host community agreements.
- **SELECTION PROCESS**: In deciding which companies with which to negotiate a host community agreement, the Commission recommends instituting an objective, transparent selection process intentionally focused on repairing past inequities, beginning with prioritizing review for state-designated economic empowerment applicants. Consider preferences for state-designated Social Equity Program participants, or applications from companies owned by marginalized groups. As

part of the selection process, consider evaluating the company’s diversity plan and plan to positive impact communities disproportionately harmed, either in the municipality or generally.

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