

Commonwealth of Massachusetts



STEVEN J. HOFFMAN
CHAIRMAN

CANNABIS CONTROL COMMISSION

101 FEDERAL STREET
BOSTON, MA 02110

TELEPHONE (617) 701-8400

CANNABIS CONTROL COMMISSION PUBLIC MEETING MINUTES

December 14, 2017 10:30 a.m.

Minihan Hall
19 Staniford Street
Boston MA

COMMISSION MEMBERS IN ATTENDANCE

Chairman Steven Hoffman
Commissioner Kay Doyle
Commissioner Jen Flanagan
Commissioner Britte McBride
Commissioner Shaleen Title

COMMISSIONER MEMBERS ABSENT: None

LIST OF DOCUMENTS:

1. Presentation:

<https://www.mass.gov/files/documents/2017/12/14/121417%20Posted%20Commission%20Meeting.pdf>

The Chairman called the meeting to order and asked for a moment of silence for the anniversary of the Sandy Hook tragedy. The Chairman thanked Executive Director Collins for his role in helping this proceeding. He announced the Commission will get into all the deferred topics that the Commission have as well as leadership program categories and regulations with respect to marketing. The Chairman added that the Commission need to further discuss the issue is smoking in primary use social consumption facilities.

Mr. Collins explained that municipalities could permit smoking or ban it. By January 31st of 2018, the executive director shall appoint the special working group to make recommendations for regulations on smoking and on the performance of social consumption by July 1st, 2018, but that report shall be considered at the discretion of the commission at a time of your choosing. The Chairman added that the vote was four to one in favor with Commissioner Flanagan voting against and the other four commissioners voting in favor. Until the Commission takes action on the report, does the Commission allow for smoking in primary use social consumption facilities, again, if the town permits it, and/or if it's licensed by the department of revenue? Commissioner Title explained that her intention was that the Commission create regulations on smoking, based on the working group recommendation, but that the Commission would not stop municipalities from permitting on their own and if a location had a smoking bar permit, the Commission wouldn't ban

that either. Commissioners McBride and Flanagan said they had the same understanding as the Chairman, Commissioner Doyle said she had the same understanding as Commissioner Title.

Commissioner Title stated that the purpose of the social consumption licenses was to provide a place where people could go besides their own home. She explained the difference between smoking and edibles, arrests about smoking, the purpose of the special working group and not preventing municipalities from acting on the issue. The Commissioners discussed the issues of allowing municipalities to allow smoking locally while the working group was working on the issue.

Commissioner McBride stated that her understanding is there would be a report and the Commission would consider it at discretion at a future date. It wasn't until the Commission considered that report that the Commission would be doing anything on the rest of that based on acting to create regulations. Commissioner Title added that she did not intend to block municipalities from acting, but that the working group would return to the Commission with recommendations on how to handle social consumption smoking, such as odor control, ventilation, and other safeguards. Commissioner Doyle said that if municipalities wished to find a way to proactively allow smoking before the Commission acted on the recommendations of the working group, that was up to them. Chairman Hoffman disagreed that the Commission could not prevent municipalities from doing something, because not allowing a license category may serve to do that, although he recognized the Commission may not be able to force a municipality to do anything. Mr. Collins asked Commissioner Title how the proposal compared to Massachusetts smoking laws. Commissioner Title said the working group would examine that. Mr. Collins asked if the issue of smoking would be added to the certification of compliance with local laws. Commissioner Title agreed it would be a good idea. Chairman Hoffman called for a motion on the operational requirements as they relate to smoking in social consumption establishments.

Mr. Collins said the recommendation is to allow municipalities to permit smoking and incorporate certification to the commission that authorization for smoking has been granted and allow establishments licensed by the Department of Revenue Smoking Bar to permit smoking by January 31st of 2018. The Executive Director would appoint the special working group to create recommendations for regulations on smoking and other forms of social consumption by July 1st, 2018, and that report shall be considered at the discretion of the commission, and topics to be included are ventilation guidelines, odor control including carbon filtration systems, employee exposure to secondhand marijuana smoke. A motion to approve was made by Commissioner Title, seconded by Commissioner Doyle. The motion to approve failed, with Commissioner Title and Doyle voting in favor and Commissioners Hoffman, Flanagan and McBride voting against. Commissioners McBride and Hoffman discussed the procedural posture of the Commission on the issue and whether another alternative form of the motion should be proposed. Commissioner Flanagan asked whether people could proceed with non-smoking forms of ingestion and social consumption. Commissioner Doyle asked about explicitly banning smoking and Chairman Hoffman added that such a ban would be until that point where the Commission made a decision based upon the working group, for which the Commission would commit to certain timelines. Commissioner McBride raised concerns about the rollout of social consumption, ensuring that people in the Commonwealth were aware of what to expect, doing the best the Commission can in light of the deadlines. Chairman Hoffman agreed and cautioned that July 1 was not a legislatively mandated deadline, that the industry would look different a year or two on, as it would evolve, but

that if the Commission felt some things could not be done by July 1, it should make that clear.

He thought this was such an area, that the Commission should wait to hear back from the working group and then say when the Commission is going to act. Commissioner McBride suggested a social consumption advisory group. Commissioner Flanagan said that it should be given to the Cannabis Advisory Board. Commissioner Doyle agreed and said if necessary, they could create another subcommittee. The Commissioners agreed that the Cannabis Advisory Board could look at the issue. Chairman Hoffman asked Commissioner Flanagan if she thought the Commission needed to revisit the issue of whether social consumption would be authorized at all. Commissioner Flanagan responded no. Commissioner McBride agreed. Commissioner McBride said the vote did not need to be revisited because just because the Commission authorized the license, did not mean the applications need to be approved at the same time if the Commission needed more information on social consumption before it did the licensing. Commissioner Title thought the questions on smoking needed to be addressed, but otherwise the Commission could move forward. Chairman Hoffman agreed. Commissioner Doyle asked if the Commission was going forward with allowing it in smoking bars and if so, if it would be difficult to pull back. Chairman Hoffman said he preferred that there is no smoking until the Commission gets a report from the working group, considers it, debates it, and votes on it with specific timeline to do so. Commissioner Doyle suggested 2 months after the report is received. Commissioner Flanagan discussed how it fit in the overall timeline. Commissioner McBride commented that she wanted to look at the statutory language for the application process and determine if the Commission could decide what dates applications for license categories could be accepted. The Chairman proposed that the Commission authorize social consumption and evaluate license applications and just not allow smoking in those establishments for those licenses that the Commission accept until such time as the law will allow. The Commissioners discussed it and Commissioner Doyle proposed making the action period 3 months rather than 2. Mr. Collins said the question was that social use and consumption may be permitted, but smoking within the establishment shall not be permitted. The executive director shall appoint the special working group to create recommendations for regulations on smoking and other forms of social consumption by July 1st, 2018. That report shall be considered within three months of issuance by the working group. Commissioner Title suggested requiring that the Commission to promulgate regulations within the 3 months. Commissioner Doyle objected to the word promulgate, because it meant that due to the deadlines regarding regulation, the Commission would only have approximately 2 weeks to consider the report. Instead, it should be draft regulations within 3 months. Commissioner Title agreed. The Commissioners further discussed the language. Mr. Collins read the vote: “By January 31st, the executive director shall appoint a special working group to create recommendations on regulations on smoking and other forms of social consumption. By July 1st, 2018, said report shall be considered, evaluated, and a draft of regulations shall be reported upon within three months of the issuance of the report.” Motion to approve was made by Commissioner Title, seconded by Commissioner Doyle. The motion was approved on a vote of four to one. Commissioners McBride, Doyle, Title, and Hoffman voting in favor, Commissioner Flanagan voting against.

Chairman Hoffman opened the discussion of inventory regulations and thanked Commissioner Doyle for drafting inventory regulations. He discussed the key points of establishing inventory controls and procedures for the conduct of inventory reviews, and comprehensive inventories of marijuana, marijuana products, and the process of cultivation, finished, stored marijuana; conduct

a monthly inventory and conduct a comprehensive annual inventory at least once every year after the date of approved use comprehensive inventory; promptly transcribe inventories if taken by an oral recording device; the record of each inventory shall include at minimum the date, a summary of the findings, names, signatures, and titles of the individuals by which it was conducted; the inventory of a marijuana establishment shall tag and track all marijuana seeds, plants, products, using the Seed to Sale methodology that the Commission will approve; and a marijuana establishment that is cultivating, processing or selling marijuana and marijuana products for medical use as well as marijuana and marijuana products for adult use must create virtual separation through tracking methodology approved by the commission. Commissioner Doyle commented that the inventory regulations from the medical use of marijuana regulations were recommended by the Cannabis Advisory Board subcommittee. Chairman Hoffman asked for a motion to approve the proposed inventory regulations adopted from the medical use of marijuana regulations. Commissioner Doyle made the motion to approve, seconded by Commissioner Flanagan. The motion was unanimously approved by the commission.

Chairman Hoffman began the discussion on recordkeeping. Commissioner Doyle noted that the cannabis advisory board subcommittee recommended the medical use of marijuana program regulations. Chairman Hoffman reminded the Commission that two issues were postponed for discussion until the recordkeeping discussion: the first is records with respect to responsible vendor training; the second is incident records and the requirement to keep them for one year. Commissioner McBride commented that it's one year or one year during the term of a pending ongoing investigation. Chairman Hoffman asked if it is redundant to include those two in the recordkeeping requirements. Commissioner Title asked to discuss the training. She said training is such a key issue to making sure that regulations are enforced properly, that she wanted to set that aside from a record that could come in and be inspected, but rather that there would be some type of signature page verifying that the training had been completed, including both elements: the responsible vendor training, and the eight hours of training. Commissioner Doyle read the language of the regulation: "Documentation of all required training, including training regarding privacy and confidentiality requirements and the signed statement of the individual indicating the date, time, and place, he or she received said training and the topics discussed including the name and title of presenters." Commissioner Title explained that she wanted notice to the Commission on the training records.

Mr. Collins described the motion as the maintenance requirements and the notice requirements suggested by Commissioner Title for the training requirements. Commissioner Doyle commented that the Commission could come up with a standardized form for that. The motion to approve was made by Commissioner Flanagan, second by Commissioner Title. The motion was approved unanimously by the commission, 5-0.

Chairman Hoffman opened the discussion on cash transactions. He said they are going to be a large percentage of transactions at retail establishments. There is data from other states that well over half of the transactions will be made in cash at retail establishments. It creates a couple of issues. One is public safety in terms of transporting large amounts of cash from retail establishments. The other is tracking and fraud prevention, particularly when it comes to tax payments. DOR is not used to dealing with cash, and they are concerned about tracking, reporting, and fraud in terms of collecting tax in cash businesses, or at least in a business that has a significant

part of its proceeds in cash. If DOR is concerned about the cash part of the business, then should it be upon the licensees to worry about what they do with the nontaxed cash, or should the Commission offer some help there? The Chairman commented that he, Commissioners McBride and Executive Director Collins had several meetings with representatives from DOR. Commissioner Doyle also talked to people from DOR regarding regulations. Chairman Hoffman explained that DOR has developed four options. They have discovered a vendor who essentially has a cash machine that would be on premises, secured, and physically attached to the premises, that would be essentially a depository that all cash would go into. The retailers would be responsible for leasing these machines. The retailers would be responsible, also, for contracting with an armored service to pick the funds up, and DOR would provide banking information to the retailer so that tax payments could be deposited in banks that DOR was doing business with. The other remaining net revenue could be deposited wherever the retailer chose.

Option two is to draft an agreement with state chartered banks and/or credit unions that would allow retailers to make cash deposits to those institutions. The logic is if they're not federally insured, they might be willing to handle the cash, but the conversations with them have not happened yet, but the Commission cannot with a hundred percent certainty say that either state chartered bank and/or a credit union would actually agree to this, but if the agreement could be reached, then the Department of Revenue and the Cannabis Control Commission would have no involvement in cash handling. Commissioner McBride asked if he meant DOR is drafting this agreement on behalf of all licensees or licensed individuals. Chairman Hoffman agreed that is what DOR is recommending.

Option three is to place larger cash handling machines around the state and these machines would take deposits of cash for tax purposes, for tax payments. The cash collection or depositing would not require DOR employees because they would be self-sourced machines. The Commonwealth would incur the cost of the machines and armored car service fees. It is unclear if the Commonwealth means DOR or the Cannabis Control Commission. The Commonwealth would incur logistical costs associated with the location, security, customer service support at these locations across the state. Once the deposits are made in these larger cash machines, they would be routed to the appropriate depository bank for the DOR's purposes. Option 3 is what Oregon has done.

Option four is that DOR has come up with is come up with contract directly with armored car services to pick up cash directly from retailers. The Commonwealth would incur the cost of the armored car services. This is currently what California is doing. Most of these first options focused on the tax issue and the fraud concern on tax. The fourth option focused on the public safety issue. It addressed tax issue, but also on public safety.

The recommendation from DOR is option No. 3, whether they or the Commission pay for it, that the state incurs the cost of creating these large cash deposit machines in convenient locations around the state. The Commission have not gotten into the specifics of how many, but the Commission would try to figure out a way to make it not an undue burden for licensees to have to drive long distances to do this. The Department of Revenue believes option 3 is the best way to go from a cost-effectiveness perspective. Commissioner McBride asked if the Commonwealth would incur the cost of machines and armored car service fees and would the licensee be bringing the

cash from the licensed location to the machine, or is the armored car service fee for that. Chairman Hoffman said he believed what DOR was specifically recommending was that the Commission pay for getting the cash from the machines to the bank. Commissioner McBride asked how option 3 would practically work for a licensee if that it would be a licensee's responsibility to make sure that there is a bifurcation of tax dollars and of profit. Chairman Hoffman added that there is POS audit trail built directly into the Seed-to-Sale tracking. Commissioner McBride asked about frequency. Chairman Hoffman said that would be determined. Mr. Collins added that in the future, as more banks get comfortable taking on marijuana-related businesses, tax payments will be made in a typical fashion, like any other business, presumably electronically. The Commissioners discussed the relationship of banks, cash transactions and marijuana-related businesses. Commissioner Flanagan commented that the second option was attractive. Chairman Hoffman agreed, but expressed concern that credit unions may not agree. Commissioner McBride if a hybrid approach of option 2 and 3 is an option. Chairman Hoffman said it could be. Mr. Collins pointed out that option 2 need not be required by regulation for the Commission to pursue it. Commissioner McBride added a clarification about the armored car service fees.

Mr. Collins stated that the recommendation is to adopt the second bullet that the Commonwealth will draft an agreement on behalf of licensees with state charter banks and credit unions, allowing retailers to make cash deposits. And then, the third bullet: allowing the use of – or establishing the use of larger cash-handling machines to deposit tax revenues at secure DOR locations across the Commonwealth. And then, editing the second sub-bullet to read, “The Commonwealth would incur the cost of machines and the processing of deposits.” Commissioner Doyle made the motion to approve, seconded by Commissioner Flanagan. The record show that this was approved unanimously by the commission, 5-0.

Commissioner Doyle began the discussion regarding the inspections and compliance structure. She recommended adopting the inspections and compliance structure of the medical use of marijuana program, which itself is borrowed from other healthcare licensees. This would include deficiency statements and plans of correction. I would encourage adopting that for market stability reasons, if no other. The existing licensees are used to it, and I think it is in line with other objectives to be inclusive of small business, and give them an opportunity to develop and grow, understanding the regulations.

Commissioner Title recommended a confidential complaints process that was raised during the public listening session. Commissioner Doyle explained that confidentiality had to comply with public records law and if the Commissioner refused to disclose something in response to a public records request, the supervisor of records may order the Commission to disclose it, so a disclaimer to that effect may be necessary. Commissioner McBride also cautioned against allowing anonymous complaints. Commissioner Title also recommended a secret shopper program, that would include purchasing items and have them testing for compliance with the regulations, particularly labelling. Commissioner Title also commented that the Cannabis Advisory Board's Marijuana Industry Subcommittee had recommended a public list of companies that were found to be “predatory or unscrupulous.” Commissioner Title suggested instead that the Commission maintain a public list of companies that had over a certain amount of deficiency statements. Commissioner McBride mentioned that other agencies make complaints public and post proceedings on their website, which are searchable by name and keyword. Mr. Collins read the

recommendation in regards to inspections and compliance as to emulate the inspections and compliance structure of the medical use of marijuana program, including deficiency statements and plans of corrections, and adding an opportunity for employees and consumers to reach the commission, confidentiality, as allowed by public record law, pursue random retail purchases for monitoring as a means of inspection and compliance, and then maintaining a public list of complaints in determination. Commissioner McBride made the motion to approve, Commissioner Doyle seconded the motion. The motion was approved by the commission on a unanimous vote, 5-0.

Commissioner Doyle begins the discussion on actions on licenses, including fines, cease and desist orders, quarantines of contaminated product, limitations on sales of products, summaries, suspensions. It is copied from the medical use of marijuana regulations, authorizing a progressive structure to discipline and to actions on license. Commissioner McBride added that this was the recommendation of the Public Safety and Community Mitigation Subcommittee. Motion to approve was made by Commissioner Doyle, seconded by Commissioner McBride. The motion was unanimously approved, 5-0.

Commissioner Doyle opened the discussion on fines. Commissioner Doyle explained that she reviewed other regulated Massachusetts industries, as the medical use of marijuana program does not have fines in their regulations. She recommended providing written notice, authorize fines up to \$25,000.00, but those fines would be similar to other disciplinary issues: progressive and based on the nature of the violation, etc. Factors in determining the amount of the fines would be the nature of the violation, violations in the past, compliance with the regulations, and the training, and the leadership program to be discussed later. It provides a clear appeals process, if they fail to take an appeal within a timely manner, and they also fail to pay the fine, then there may be further action on their license like a suspension or something like that until such time as they resolve the issue. Chairman Hoffman asked Mr. Collins how that compared with enforcement on alcohol establishments. Mr. Collins said that it varies, but they are allowed to suspend and determine the profit that would have been made for the suspension period. Chairman Hoffman asked about the maximum fine. Mr. Collins responded that there was no maximum for alcohol. Commissioner Title recommended removing the limit. Chairman Hoffman disagreed because it is important for businesses to have quantified risks, but said the Commission could raise the limit. Commissioner Title agreed. Chairman Hoffman asked if fines were associated with particular types of licenses. Commissioner Doyle said they were not, just the factors she described before, but in the future the Commission could evaluate preparing an appendix that included a grid. Commissioner McBride described the standard for appeals to assessing fines and how it supported putting limits on fines. Commissioner Doyle clarified that the \$25,000 fine was per incident, not a total cap. Commissioner Title asked about appeals and hearings. Commissioner Doyle responded that they are standard administrative appeals processes. Commissioner McBride said she could discuss the administrative appeals slide. She explained that appeals would proceed under G.L. c.30A. There are two options: an appeals process to the Division of Administrative Law Appeals (DALA), or the Commission could adopt a G.L.c. 30A appeal to contracted hearing officer or hearing officers that the Commission would have, often retired judges. She commented that DALA is overloaded, which may be a problem later when the industry is standing up. She commented that a measure of success is the ability when there is an issue, to move through it efficiently and effectively, to give everyone certainty about what the outcome is going to be. For

that reason, she recommended opting for the hearing officer and adopting internal fair hearing processes that are already set forth in state regulations. Commissioner McBride explained that there are formal and informal rules. Formal rules are really more like a judicial process. There are timelines and evidence rules. Informal hearing rules are the rules that more administrative agencies function under. They provide more leeway regarding evidence and timelines. It's a model that other licensing agencies adopt. Administrative law attorneys are familiar with these rules. Courts are also familiar with them from appeals. The way it would work would be that the Commission would send a notice of violations, stating the grounds for the action, the right to request a hearing within a certain time period, the time period in which to make a request for the hearing, that the hearing is to be conducted according to informal rules. The burden would be on the commission to prove by preponderance of the evidence that the violation complained of existed. The hearing, which really takes more of the format of a meeting with the hearing officer, the licensee, and then whoever on the commission side would be presenting the evidence of the violation, likely someone from Investigations and Enforcement. Commissioner Title asked if there would be an attorney representing the Commission or the licensee. Commissioner McBride said the licensee could opt to have an attorney, and there may be an attorney for the Commission. Commissioner Title asked how the hearing officer would have sufficient subject matter expertise to be making the judgment. Commissioner McBride said it will be for the Commission to find the right person, but she noted that when an appeal was taken to Superior Court, there is no guarantee that any particular judge has knowledge on a subject matter, they typically bring themselves up to speed. Commissioner McBride asked if the Chairman or Mr. Collins had any questions from a budgetary perspective. Chairman Hoffman assured the Commission that if the Commission approved the recommendation, the Commission will make sure it is budgeted appropriately. Commissioners Doyle and Flanagan spoke in support of the recommendation, acknowledging that DALA was overloaded. Chairman Hoffman asked for a motion on the recommendation as written. The motion to approve was made by Commissioner Flanagan, was seconded by Commissioner Title. The motion was approved unanimously by the commission, 5-0.

The Commission returned to the discussion on fines. Commissioner Title asked to run through the disciplinary process. Commissioner Doyle explained the progressive discipline process and factors that are considered in assessing fines. Commissioner McBride laid out an illustrative example of an inspector finding a problem and how it would proceed through the system. Commissioner Title asked about inspector's discretion and when it becomes an issue for the Commission itself in terms of discipline and fines. Commissioner Doyle explained that because the Commission does not have inspection staff at this point in time, so the Commission is probably going to have to leave that a little vague for the moment in the regulations as the Commission or its designee. Commissioner McBride expressed confidence that the Commission could build a thorough process based on models already used by other agencies. Chairman Hoffman asked for a motion to approve as written. Commissioner Doyle made the motion to approve, seconded by Commissioner McBride. The motion was unanimously approved by the commission.

Commissioner Doyle began the discussion on the section of the regulations that established non-conflict with other laws. It states that the Commission is not requiring anyone to violate federal law. The Commission is also not purporting to give immunity under federal law. The Commission are not saying that regulations pose an obstacle to enforcement of federal law, and the Commission is also not saying that it's okay to operate a motor vehicle, a boat, or an aircraft while under the

influence of marijuana. It will also state “Except as otherwise provided in regulations, nothing should be construed to limit the applicability of other laws as it pertains to the rights of landlords, employers, law enforcement authorities, or regulatory agencies.” Commissioner McBride made the motion to approve, seconded by Commissioner Flanagan. The motion was unanimously approved, 5-0.

The Chairman called for a recess until 12.45.

Chairman Hoffman opened the conversation on a class of license for retail delivery with no brick and mortar and delivery-only licenses. Chairman Hoffman stated that there were two arguments regarding retail delivery with no brick and mortar. The argument for is those municipalities that are concerned about having brick and mortar facilities, might give them another option and give residents of those towns and cities another option that wouldn't have the same set of objections that a brick and mortar establishment on Main Street might have. The argument against is the Commission has in place some very explicit security requirements for brick and mortar retail and for storage of product. He expressed concern regarding storage requirements where there was no brick and mortar store. Commissioner Doyle asked if retail delivery-only licenses were going to be limited to only people who have other licenses, like a marijuana cultivator or a marijuana product manufacturer. Chairman Hoffman said he thought that would be reasonable, but he wanted to hear from the other Commissioners on that issue.

Commissioner McBride commented that the delivery option was attractive in light of the uncertainty of driving with marijuana. She was in favor of product being secured and building protocols to ensure diversion prevention. Chairman Hoffman asked if there were any further comments other than limiting the delivery option to existing marijuana cultivators and marijuana product manufacturers. Chairman Hoffman clarified that there would be no requirement that deliveries could be made only in a municipality where the licensee was located. Commissioner McBride commented that any product not delivered must be returned to the licensee's premises. Chairman Hoffman agreed that the same delivery protocol the Commission had approved would apply. Mr. Collins read the motion as retail delivery with no brick and mortar locations as an extension of other marijuana establishment licenses, excluding social consumption licenses. Delivery is not limited to any geographic location, and delivery protocols will apply. The motion to approve was made by Commissioner Doyle, seconded by Commissioner McBride. The motion was approved by a four to one vote of the commission. Voting in favor were Commissioners McBride, Doyle, Title, and Hoffman, and voting against was Commissioner Flanagan.

Chairman Hoffman opened the discussion on a delivery license that is not linked to another marijuana license. Chairman Hoffman recommended against approving this kind of license at this time. The Commission may further study it, similar to the smoking issue and commit to timelines. Commissioners Flanagan and Doyle agreed. Commissioner Title did not agree and explained she supported the license due to the low barrier to entry, the low need for capital and the way that relates to the mission statement. Chairman Hoffman raised setting a deadline for study for October, 2018. Commissioner Title suggested staggering it after the environmental and the smoking. The Commissioners discussed referring the matter to the advisory board for recommendations by October 31, 2018 and the Commission will vote on regulations no later than 90 days after the Commission receives the recommendation.

Mr. Collins read the recommendation as not to allow delivery only license not linked to any other marijuana establishment license at this time, refer the issue to the cannabis advisory board for recommendations back to the Commission by October 31st, 2018. The commission shall consider, evaluate, and adopt draft regulations within three months of issuance of the recommendation.

Motion to approve was made by Commissioner Doyle, seconded by Commissioner Flanagan. The motion was approved by a four to one vote by the commission. Voting in favor were Commissioners Flanagan, McBride, Doyle, and Hoffman. Voting against was Commissioner Title.

Chairman Hoffman opened discussion on social consumption, reminding the meeting that the Commission already approved a license category for mixed use licenses. The only question that was left unresolved was whether the Commission would require the use of product that was from a regulated source or not in those establishments, or whether the Commission would allow people to bring their own product into the establishment.

Commissioner Title explained that the model would be based on local level one-day alcohol licenses. Chairman Hoffman clarified that she was talking about event licenses. The Commissioners discussed whether the issue before them was bring-your-own-cannabis (BYOC) or otherwise. Commissioner Title explained she wanted to talk about event licenses at this point. The recommendation is that the process for obtaining municipal approval for an event license will mirror the process already established in each city and town for obtaining a special one-day alcohol license. It would be up to the municipality to come up with the application process and fees. After an applicant receives approval at that level, they would submit documentation to the commission for state approval, and they would only be approved under certain conditions that we've discussed from an operational perspective: Access being restricted to people 21 and older, cannabis consumption not being visible from a public place or non-restricted area, sale and consumption of alcohol not being allowed, and of course, these would only be issued in municipalities where no prohibition exists.

Commissioner Title added that cannabis consumed on the premises would be purchased from a licensed retailer. In terms of the BYOC, the Commission looked at some other cities like Denver, which does allow BYOC, and certain other municipalities in Colorado. She recommended that the Commission take it up as a separate vote to simply fold that into this process, so that if the municipality wanted to allow BYOC as part of an events license, they could, and the Commission would treat it like other events licenses. Commissioner Title recommended that it should be one way or the other: either BYOC or purchasing products that have been purchased from a marijuana establishment.

Commissioner Doyle commented that she was uncomfortable with BYOC, primarily due to smoking and the inhalation of secondhand smoke from products that have not been subject to the testing requirements and possible health impacts but also about people who could be sharing untested marijuana products that have not been produced in the way that regulations would require them to be produced: the sanitary requirements, the testing requirements, etc. Commissioner McBride agreed and commented on rolling out different structures after seeing how the initial structures function. Commissioner Flanagan agreed and compared it to bringing alcohol to a one-day licensed event. She added that she had further concerns about multiday events regarding

people leaving the premises, public safety, driving back and forth, and public health. Commissioner Title explained that she appreciated the public health and safety concerns, but the underlying thought was that in some cultures, events like weddings go on for multiple days. She would have modeled BYOC off existing municipal regulations on BYOB, but she noted smoking was not considered in those processes. Chairman Hoffman commented that he agreed with Commissioners Flanagan, Doyle, and McBride, and specifically with Commissioner Flanagan on one-day licenses, rather than multiday licenses. Commissioner Title said she would propose one-day licenses with no BYOC. Chairman Hoffman clarified that no BYOC applies to both event licenses and mixed use licenses. Commissioner Title agreed.

Commissioner Flanagan asked how one-day licenses would work in light of the smoke-free laws. Commissioners Title and Hoffman talked about the smoking workgroup and how the bar against smoking in social consumption would include one-day licenses.

Mr. Collins read the recommendation as relative to social consumption and event licenses, the process rotating in one day – an event license limited to one day at a time should mirror the process for obtaining the one-day liquor license. Once approved locally, the submission will be required to the Cannabis Control Commission, and will be approved in certain conditions. Those conditions include: Access must be restricted to those 21 and over, consumption must not be visible from any public place, sale of alcohol will not be permitted, and it will not be issued where a prohibition on any marijuana establishment already exists. Cannabis must be consumed on premises, must be purchased from a licensed retailer. Patrons of social consumption licenses, including one-day event licenses, would be limited to products sold by the marijuana establishment, and therefore BYOC would not be permitted. Commissioner Doyle asked where the licensee was acquiring the marijuana and marijuana products. The Commissioners discussed the licensee being able to buy from marijuana cultivators or product manufacturers and the intent to mirror alcohol licensing. Commissioner McBride asked about events that had attendees who were under 21. Commissioner Title responded that it would be restricted to 21 and over and the application would have to include how they intend to meet that requirement. Chairman Hoffman asked how the product would be tracked and taxed if attendees at the event had to buy their own. Commissioner Title added that she would be fine with adding that as a requirement.

Mr. Collins read the recommendation as relative to social consumption event licenses. The process for obtaining an event license, which would be limited to one day at a time, should mirror the process for obtaining a one-day liquor license. Once approved locally, however, a submission must be made to the commission and approved of certain conditions. Those conditions would include: Access is restricted to individuals 21 and over, consumption must not be visible from any public place. The sale or consumption of alcohol is not permitted, the license may only be issued where no prohibition of establishments exists, and cannabis consumed on the premises must be purchased from a licensed retailer who is a licensed establishment. Any sales must be accommodated or incorporated through the tracking system for the purposes of tax compliance. Patrons of any social consumption license, including one-day event licenses will be limited to products sold by the marijuana establishment, and therefore BYOC would not be permitted. Commissioner Title moved to approve, Hoffman seconded. The motion was not approved by a three-two vote. Voting in favor were commissioners Title and Hoffman. Voting against were Commissioners McBride, Flanagan, and Doyle.

Chairman Hoffman opened the discussion on fees for both license applications and annual license fees, as well as minimum capital to approve licenses. The Chairman explained his philosophy in proposing the fees was that application fees and annual license fees are intended to cover cost of processing the application and enforcing the license. There is also a desire to ensure that application fees and annual license fees are not a barrier to entry for smaller participants.

The Chairman called for a ten-minute recess.

The Commission reconvened. The Chairman reviewed the different license categories that had been authorized by the Commission. He presented a table about similar categories, where available, in Colorado, Oregon, Washington, and California. He discussed Oregon having a micro-tier one application fee of \$250.00 and a \$1,000.00 annual fee. The application fee is universal, but the annual fees go from \$1,000.00 at the lowest tier to \$5,750.00 at the highest tier. Washington has different tiers, but they don't differentiate in terms of \$250.00 application fee and \$1,480.00 annual fee, regardless of what tier. California has many tiers and they differentiate between indoor and outdoor cultivation. The fees for indoor cultivation are dramatically higher. The largest tier of indoor cultivation in California, which is 10,000 to 22,000 square feet, the application fee is \$8,655.00 and the annual fee is \$77,905.00. The average application for manufacturing is \$250.00 or \$300.00 for an application fee, a non-refundable application fee. It varies, but that's kind of the average. Colorado does not have an application fee, but the license fee goes partially to the state and partially to the municipality where the license will be granted. In the 2018 supplemental budget that was just approved by the legislature and signed by the governor, the Commission have \$175,000.00 in that for application processing. That does not include background checks and finger printing. The unknown is how many applications are the Commission going to get. The Chairman used 400 applications to get \$437 or 600 it is \$292 per application. The Chairman looked at enforcement costs associated with a staffing model, under which the Commission have a director of licensing and enforcement, and the Commission have 12 licensing enforcement personnel, equipment and supplies for those personnel, in terms of cars, hazmat suits, and so forth. All the categories within the fiscal '19 budget that apply to enforcement of licenses, add up to \$1.3 million in fiscal 2019 budget. The Chairman used an estimate of 200 to 300 licenses in FY2019 to come up with a cost per license for enforcement between \$4,300.00 and \$6,500.00.

The average for an annual license fee, without tiering, is about \$5,000.00. On that base of the analysis he did, the Chairman made the recommendation that the Commission set a non-refundable application fee of \$300.00, explicitly not including the cost of background checks and fingerprinting for all categories of licenses, except the Commission waive it for equity applicants, which we've already agreed to do, and that the Commission tier it for cultivation licenses. Secondly, the Commission set the average annual license fee at \$5,000.00 for all entities. As agreed, the Commission reduce that by 50 percent for micro-licenses. The Commission would vary from that \$5,000.00 only if there is a reasonable expectation that enforcement costs will differ from that average.

Regarding the tiered application fee and annual license fees for cultivation, the annual application fee goes from \$100.00 to \$600.00 as you go from tier one to tier four. The annual license fee goes from \$1,000.00 to \$2,500.00 to \$4,000.00 through tiers one, two, and three. And then, since tier

four is over 10,000.00 feet, but can go well beyond 10,000.00 feet, I proposed a \$5,000.00 annual fee plus \$0.25 per square foot over 10,000 feet. For craft manufacturer cooperative, it is a \$300.00 for the application fee plus the appropriate license for the tier they would fall under. For micro-license, he reduced the annual fee. For manufacturing, independent labs, retail brick and mortar, he recommended \$300.00 for each of those categories for application fee and \$5,000.00 for annual license fee. For transportation, the Chairman recommended the standard \$300.00 and \$5,000.00. For research license, he recommended a lower annual fee of \$1,000.00. For social consumption, primary use, the standard \$300.00, \$5,000.00. For mixed use, as this is a smaller part of the business, he proposed the same \$300.00 application fee, but a \$2,500.00 annual fee. For RMD conversion, he recommended a \$450.00 application fee, with the sum of the licenses fees they could be charged for cultivation, retail, and manufacturing, \$5,000.00. Commissioner McBride asked about a situation where an RMD did not wish to continue one part of the operations. Chairman Hoffman agreed to adjust the text to address that concern. Chairman Hoffman proposed a \$300 application fee for retail delivery only with no brick and mortar, but no license fee. Commissioner Doyle clarified that for the retail delivery no brick and mortar, certain entities will be allowed to conduct delivery and the Commission will have costs associated with that, including compliance enforcement and reviewing at the outset of the protocol, and proposed a \$2,500 fee. Chairman Hoffman agreed. Commissioner Doyle recommended that for craft marijuana cooperative line that both licensing and application fees be tied to tiers. Chairman Hoffman agreed. Commissioner Title asked for a sliding fee on mixed-use licenses tied to retail revenue. Commissioner Doyle also suggested a \$100 fee for business name changes, which the Commission must review, consistent with the medical use of marijuana program. She also proposed a change of location fee of 50% of the license fee, as that requires a comprehensive review by the Commission, a \$500 fee to review any change in building structure, and a \$500 fee to review changes in ownership.

Commissioner Doyle asked about background fees. Commissioner McBride said the fee would likely be approximately \$35 a person, but it will be charged separately. The Commissioner discussed the background check fee.

Chairman Hoffman read the motion as requiring nonrefundable fees, waiving application fees for equity applicants, and listed the fees that the Commission had discussed and asked for a motion. Commissioner Flanagan made a motion to approve, seconded by Commissioner Title. The motion was approved unanimously, 5-0.

Chairman Hoffman opened discussion on capital requirements. The issue is should the Commission require threshold amounts and available capital to approve a license application. “Available capital” means that you can show assets of your own that are liquid of a certain amount, or a different amount of your assets of your own that illiquid. Illiquid assets would require a higher threshold because it is more difficult to convert into cash. The Chairman identified two options; the Commission can set capital requirements that need not be the same for all categories of licenses; and not setting capital requirements, but require disclosure in the licensing process of the source of funding. The purpose of putting in capital requirements, is to make sure that the upfront investment required to start a business, particularly to adhere to security and other regulations that the Commission is going to put in place is there. Outside of the world of regulated industry, available capital is used for two things when you think about starting up a new business. One is

not just making the upfront investment that is required, but also to cover operating costs and new business as revenue builds. Very few new businesses open on day one and have 100 percent of the revenue that they expect that they will have on an ongoing basis. There is a ramp, but there is a need for capital to cover that ramp where the business is in the first couple of months or maybe longer. The operating cost will exceed your revenue. The third is a rainy day fund. The rule of thumb is the upfront investment required to start a business plus three to six months of operating costs to cover the ramp and to cover the rainy day.

Chairman Hoffman explained that he and Commissioner McBride had conducted research and there are no capital requirements for adult use marijuana, although there are requirements for medical use in some states. Commissioner McBride commented that the reason was to ensure stable access for patients to their medicine. Chairman Hoffman stated that he believed it was in the Commonwealth's best interest to have a stable industry and he was worried that if the Commission doesn't put in capital requirements, there is going to be a high rate of failure. The counterargument to that is that it is not the Commission's role to babysit or certainly not its role to guarantee the success of any entrance into this business. Its role is to ensure that the Commission have adequate license requirements in place that will ensure public health and public safety, that the Commission enforce those regulations, that the Commission have the ability to take licenses away when those are not being met. His recommendation was that the Commission should not require capital or minimum capital availability for licensees, but do require source of funding.

Commissioner Doyle recommended further conditions to protect number health and safety, by requiring the posting of a certain amount or a bond in a certain amount to deal with dismantlement costs if someone goes under and disappears, which is common in some other regulated industries. Commissioner Doyle also recommended that without capital requirements, there is a concern that applicants will not have sufficient funding to get up and running. Even with capital requirements, certain applicants in the medical use of marijuana field have floundered. She recommended that the Commission set expectations for how soon licensees are going to get up and running because if they're holding onto a license in a particular space, and other people are considering whether or not they want to open up something in that area, the fact that there is a licensee sitting out in that area creates confusion as to what the opportunities are in that area. She recommended requiring that the Commission hold people to their projected milestones with some flexibility for requested changes.

Chairman Hoffman agreed and added that the Commission would give guidance on capital adequacy and requirements for equity and minority applicants, as part of the technical assistance program. Commissioner McBride asked if bonds would be difficult to get in light of constraints on financial institutions to do business with marijuana-related businesses. Commissioner Doyle responded that they were not sure at this time, so in the insurance context, they provide an escrow alternative. Chairman Hoffman suggested that the Commission do the same here. Commissioner McBride agreed.

Chairman Hoffman read the recommendation as to not set capital requirements for licensees, but do require a disclosure of source of capital, ensure the technical assistance programs gives guidance on capital adequacy and requirements, require a bond or an escrow fund to cover potential dismantling costs, and to require as part of the application process to set benchmarks and that there will be monitoring of compliance with those benchmarks, in terms of becoming operational.

Commissioner Doyle made the motion to approve, seconded by Commissioner Flanagan. It was approved unanimously by the commission, 5-0.

The Chairman called for a five-minute recess.
The Commission reconvened.

Commissioner Title opened the discussion on ways to structure incentives so that experienced industry participants can provide license application assistance that would be tangible to equity applicants in a way that could not be gained or at least easily gained. The concern is equity applications may experience trouble getting through the municipal level, but if the Commission granted licenses on a 1:1 basis, they may get a more equitable chance. The way it would work is a municipality would send us a general non-equity applicant and the next person who should be granted one at the state level for that municipality would have to be an equity applicant. The Commission would post on its website that the municipality needed an equity applicant and if no one came forward in 90 days, the Commission would proceed and grant the next general applicant for that municipality. Commissioner Title proposed allocating security funds for any municipality that agreed to participate in the program or grant a license to an equity applicant. Commissioner McBride agreed with the goal of giving assistance on security measures. The Commissioners discussed how the program would work in towns that had no equity applicants. Chairman Hoffman recommended that the Commission has a great deal regarding the equity mandates of the legislation in terms of the strong technical assistance program and the rolling the fees, and allow those measures to proceed and if it doesn't work, the Commission will evaluate and do better. Commissioner McBride commented that the Commissioner could look into ways to support the technical assistance program with pro bono work from attorneys. Chairman Hoffman added that consultants also do pro bono work. The Commission discussed that they did not need a vote. Mr. Collins added that the Citizens Review Committee may have further recommendations.

Commissioner Doyle began discussion on the leadership program. She explained that other industries come up with standards to mark excellence in their industry, and the Commission would like to specify certain goals for individual categories and the criteria that the Commission think would indicate excellence, and then recognize that excellence by giving leadership status for a particular year. The leadership categories would be social justice leader, local employment leader, energy and environmental leader, and compliance leader.

For social justice leader, the options that she recommended are the first three bullet points, which is 15 percent or more of the licensee's employees are from areas of disproportionate impact, at least one licensee executive is from an area of disproportionate impact, as determined by the commission, and that the licensee has conducted 50 hours of educational seminars targeted – or contributed their employees to education seminars targeted to residents of areas of disproportionate impact in one or more of the following subject matters: marijuana cultivation, marijuana product manufacturing, marijuana retailing, or marijuana business training. Commissioner Title suggested that social justice criteria should be someone who donates one percent of their gross revenue to the technical assistance fund and eliminate the other criteria except for the educational seminars.

Commissioner Doyle described the local employment leader as 51 percent or more of the licensee's employees have been a Massachusetts resident for six months or more, as determined

by the commission. At least one licensed executive has been a Massachusetts resident for six months or more, as determined by the commission.

Commissioner Doyle described the energy and environmental leader criteria as the licensee has met or exceeded its energy and environmental impact goals for its registration period, and the licensee is consistently complies with best management practices for energy use, waste disposal, and environmental impact. The best management practices will be clarified by the energy and environmental work group.

Commissioner Doyle described compliance leader criteria. All licensee employees have completed all required trainings for their positions within 90 days of hire, the licensee has not been issued a written deficiency statement, the licensee has not been the subject of a cease and desist order or a quarantine order, the licensee has not had its license suspended and the licensee has met all timelines required by the commission. The program will evaluate the past year upon the renewal of the license to determine eligibility for the leadership program, so the first date that it will be determined is July, 2019.

Commissioner Title asked to amend local employment leader to change six months to one year. Commissioner McBride asked to increase the number of executives. Chairman Hoffman suggested a majority. Commissioner McBride asked if status as a compliance leader would be factored into license action or fines. Commissioner Title asked that a logo be designed to put on the packaging to indicate it was created by a social justice leader, since the bar for that one was so high. The Commissioners discussed the budget for the graphic designer. Commissioners Flanagan and Doyle suggested that all leaders should be recognized. Commissioners discussed it. Commissioner Title suggested different colors. Commissioner McBride suggested a special designation for the social justice leaders.

Chairman Hoffman read the recommendation that the Commission will create or provide a leadership program and that the Commission will have four categories of leaders in these leadership programs: Social justice leader, local employment, energy and environmental leader, compliance leader. That social justice leader will be the third bullet plus one percent of gross revenue contributed to technical assistance programs. The local employment leader criteria will be 12 months residency for both employees and executives, and that the Commission are going to say instead of “at least one executive,” the Commission are going to say, “the majority of executives.” The energy and environmental leader criteria are as written. On Compliance leader, the Commission just changed the 60 days to 90 days to be consistent with the responsible vendor training program. The Commission will publish on website all compliance leaders, but that the Commission would allow labeling to reflect social justice leaders and use graphic design budget to create that logo. Commissioner Flanagan made the motion and Commissioner Doyle seconded. The motion was approved unanimously by the commission.

Commissioner Doyle began the discussion on Martha’s Vineyard and Nantucket. She explained that the issue was difficult because there are some things that the Commission cannot fix by regulation. As much as the Commission would like to completely resolve the issues that are unique to Martha’s Vineyard and Nantucket, it is difficult to do so in compliance with the multiple intersecting laws. She recommended that the regulations read to the extent permitted by law, the

islands may fully participate in the adult use program. The islands face a unique barrier in the form of water and air to access all of the things that are available to mainland operators. To the extent that they are prevented by law, the islands are not required to comply with the full array of testing protocols that the Commission adopted yesterday from the DPH testing protocols. Instead, they will be permitted to do a point of sale testing protocol that would have lesser requirements with a warning label to consumers that the material has not been subject to the same level of testing. They would also be permitted, if they so chose, if there are multiple applicants on the islands, to jointly fund a testing lab that didn't meet the criteria of an independent testing lab, although generally testing labs and marijuana establishments should not intersect with financial interests. As it is so difficult and so expensive to generate an independent testing lab on the islands, however, applicants on the island would have the option of clubbing together to fund a lab that still would not have to meet the stringent criteria of an independent testing lab. And again, there would be a warning label provided to consumers to say this isn't the same full array of testing that mainland consumers are used to. Chairman Hoffman asked if the Commission would specify the criteria these labs would have to meet. Commissioner Doyle agreed that they would, working cooperatively with the labs once the Commission have scientific staff on board or a scientific consultant to work with the Commission would be able to work with the applicants to develop. Commissioner McBride made the motion to approve, seconded by Commissioner Title. The Commission approved this recommendation unanimously, 5-0.

Chairman Hoffman stated there was no new business that he was aware of now that I was not anticipating at the time of the posting of this agenda. Chairman Hoffman expressed pride in the process used by the Commission, but recognizes that there is more work to do in the upcoming weeks. He announced the cancellation of the meeting on Friday, December 14, 2017. The next meeting would be a week from today, the 21st of December at Minihan Hall in the Hurley Building at 19 Staniford Street, Boston. The Commission is adjourned as of 3:02pm.