

Commonwealth of Massachusetts



CANNABIS CONTROL COMMISSION

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STEVEN J. HOFFMAN

CHAIRMAN

CANNABIS CONTROL COMMISSION PUBLIC MEETING MINUTES

December 21, 2017 12:00 p.m.

Minihan Conference Room

Hurley Building, 6th Floor

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. Draft Regulations for Discussion: <https://mass-cannabis-control.com/document/handout-draft-regulations-discussion-12-21-2017/>

The Chairman called the meeting to order at 12:00 p.m. and announced the Commission would be recessing for 90 minutes to complete work on the draft regulations.

The Commission reconvened at 1:30 p.m. The Chairman apologized for any inconvenience created by this recess. The Chairman explained that the Commission spent four days in public meetings last week. The Commission agreed on over 80 policies that were specifically about what categories of licenses the Commission were going to authorize, what operating and security requirements the Commission were going to place on licensees in each of those categories, the process by which the Commission were going to decide which license applications to approve, and the appeals process in case the Commission disapproved of an application.

The Commission then spent the week since the Commission last met meeting with various interest groups and parties that wanted to comment on what the Commission decided last week and took all of the decisions the Commission made last week and embedded them into proposed regulations.

He emphasized the work that Commissioner Doyle and Commissioner McBride did in terms of taking what the Commission did last week and crafting it into 108 pages of draft regulations. Commissioner Title, Commissioner Flanagan, Executive Director Collins, and the Chairman have all been working pretty hard this week as well.

The Commission are going to talk about and vote on and approve the draft regulations. Once the Commission are done, the draft regulations will be posted on the Commission's website and filed with the Secretary of State's office on or before December 29th, 2017. The Commission will also, shortly, post the dates and locations of the public hearings on the website. And additionally, the Commission will send notice of those dates to the *Boston Herald*. The Commission will have additional public meetings to the commission to discuss the feedback and the suggestions and ideas that the Commission got from those public hearings; discuss and decide upon whether the Commission need to make any changes or modifications to the draft regulations and have final regulations promulgated with the Secretary of State by March 15, 2018.

The Chairman explained that the Commission was going to go through, section by section, the draft regulations. So, for section 500.001, he will ask each of the commissioners, "Do you have any issues with the language?" If not, they will move on to section 500.002. If there are issues, the Commission will stop, talk about them, and the Commission will vote either to keep the language that was originally in these drafts or any changes that the Commission threw on. And the Commission will do that for every section of the regulations if there are any issues.

When the Commission are done with that the Commission will have, essentially, a revised draft that will include whatever decisions the Commission made about specific sections along the way. And then the Commission will have a vote to approve the entirety of the draft regulations. And that will be the end of the meeting. The Commission will not be re-debating policy, but language and inconsistencies, but not minor typos. When the Commission is done and the draft regulations approved, the approval will be subject to corrections in clerical errors, formatting errors, and other ministerial corrections.

The Chairman explained that all the draft regulations are 935 of the Code of Massachusetts Regulations 500. All of the regulations have that prefix, so he would not mention those numbers and would refer to the numbers that came after.

The Chairman called for holds on Section .001, "Purpose." There were none.

The Chairman called for holds on Section .002, "Definitions." Commissioner Doyle had a hold on Social Consumption Operations on page 9. She explained that Commissioner Title had pointed out that the definition of Social Consumption, as it is currently stated on that page says, "Social consumption operation means an entity licensed to purchase or otherwise acquire marijuana from licensed marijuana establishments and sell single servings of marijuana to consumers for consumption or use on the premises." The issue of single serving in sort of a singular pack is not what would happen in a restaurant-style setting for infused foods. The Commission will discuss that in regards to another part of the regulation, but to reserve that issue, Commissioner Doyle proposed adding at the end of the sentence here: "(comma) except as otherwise authorized herein."

The Chairman asked if there were any other holds on section .002, "Definitions." Commissioner Title has a hold on Social Justice Leader. She had submitted a definition for it, but none of the other leadership categories were defined, so she suggested striking the definition. There were no objections to Commissioner Title's suggestion.

The Chairman asked if there were any other holds on section .002, "Definitions." There were none. The Chairman asked why the regulations skipped numbers, so that the next section after .002 was .005. Commissioner Doyle explained that it was simply to leave room in the event that there are other things in the future that need an insert.

The Chairman called for holds on Section .005, "Fees." Commissioner Title stated that under microbusiness, the Commission came up with the license fee by taking half of cultivation, but she realized there would also be manufacturing. She suggested that it be changed to 50% of the applicable fee, which would be determined by the applicable cultivation fee plus the fee for product manufacturing. She also questioned, under "fines" a sentence that read: "The commission may issue an order to show cause as to why a fine or other financial penalty against a licensee should not be imposed for any act or omissions which are in violation of any provision of the act or any regulation." Commissioner Doyle commented that she believed that was language used throughout the Code of Massachusetts Regulations regarding fines, to say that the commission issues notice of a violation and the licensee has an opportunity to respond. Commissioner Title suggested the language be clarified for the licensee to show cause. No one objected.

The Chairman called for holds on Section .030: "Registration of Marijuana Establishment Agents;" Section .031: "Denial of a Marijuana Establishment Agent Registration Card;" Section .032: "Revocation of a Marijuana Establishment Agent Registration Card;" Section .033: "Void Marijuana Establishment Agent Registration Card;" and Section .040: "Leadership Ratings Program." No holds were called.

The Chairman called for holds on Section .050: "Marijuana Establishments." Commissioner Title commented that subsection (A)(12) at the top of Page 18 said "No licensee shall be granted more than three licenses in a particular class, except as otherwise specified. An independent testing laboratory or standards laboratory may not have a license in another class. No individual or entity shall have control over more than three licenses in a particular class of license." Commissioner Title asked for clarification on "control" compared to "controlling interest." The Commissioners discussed possible clarifications. The Commissioners agreed to change the last sentence to "No individual or entity shall be a controlling person over more than three licenses in a particular class of license." The Chairman asked if there were any other holds in section .050: "Marijuana Establishments." There were not.

The Chairman asked for holds on Section .100: "Applications for Marijuana Establishment Licenses." Commissioner Title read Section (A)(18) on page 22 at the bottom: "Documentation that the marijuana establishment is an entity registered to do business in Massachusetts, and a list of all executives, managers, persons, or entities having direct or indirect authority over the management policies, security operations, or cultivation operations of the marijuana establishment, close associates and members of the applicant, if any, and a list of all persons or entities contributing 10% more of the initial capital to operate the marijuana establishment,

including capital that is in the form of land or buildings.” She said she felt that that excludes vendors that are being paid a significant amount. So, I wanted to suggest including documentation of vendors over a percentage or amount. She gave an example of a staffing company that provides businesses with staffing services for pay. If the amount paid was over a certain amount, it should be disclosed in the application. The Commissioners discussed whether the definition of “Close Associate” which means “The person who holds a relevant financial interest in, or is entitled to exercise power in, the business of an applicant or licensee; and by virtue of that interest, or power, if able to exercise a significant influence over the management or operations.” Commissioner Title withdrew her request. The Chairman asked if there were any other comments on .100: “Applications for Marijuana Establishment Licenses.” Commissioner Title responded that she had a hold on page 34 on subsection (h)(xi), in that to provide consistency with an earlier definition of “diversity plans”, she wanted to add back in “people of all gender identities.” It would read: “Diversity plan to promote equity among minorities, women, veterans, people with disabilities, and people of all gender identities in the operation of the marijuana establishment.” No one objected. The Chairman asked if there were any comments on Section .100. There were not.

The Chairman asked if there were holds on Section .101: “Licensure and Renewal;” Section .102: “Notification of Change;” and Section .103: “Marijuana Establishments – Grounds for Denial of Initial Application for License.” There were none.

The Chairman asked if there were holds on Section .105: “General Operational Requirements for Marijuana Establishments.” Commissioner Title had a hold on page 43, (D)(1)(c): Permitted Practices, reading “A marijuana establishment may display in secure locked cases samples of each product offered for sale, as subject to the requirements of 935.CMR.500.110. These display cases may be transparent.” Commissioner Title asked to include the possibility of smelling a sample. The Commissioners discussed different language. Commissioner McBride proposed “An authorized marijuana establishment agent may remove a sample from the case and provide it to the consumer for inspection, provided that the consumer shall not consume or otherwise use the sample onsite, unless otherwise authorized herein.” There was no objection.

Commissioner Title had an additional hold in section .105: “General Operational Requirements for Marijuana Establishments” on page 45, the section regarding prohibited practices, because the Commission had permitted all of the advertising requirements from the statutes, and then an additional three bullet points. The Commissioner discussed removing one subsection, (R). The Commissioners discussed subsection (Q). Commissioner Title discussed subsection (T) which she proposed would read “No signs or other printed matter advertising any brand or any kind of marijuana product that are displayed on the exterior or interior of any licensed premises wherein marijuana products are not regularly or usually kept for sale.” The Chairman also went through section (O), (U), (V), with no objections from other Commissioners.

Commissioner Title said he thought subsection (T) is too broad. The Commissioners discussed promotional items. Commissioner Flanagan recommended removing the word marijuana establishment” so companies could brand their company name, but not promote marijuana or marijuana products. There was no objection.

Commissioner Title had a further hold on page 47, subsections H and I. She read “The serving

size of the product in milligrams –if the package is a multiple serving package, the number of serving sizes within the marijuana product based on the limits provided.”

She asked for clarification that the information on the label was “The serving size of the marijuana product” rather than the food. There were no objections.

Commissioner Title had another hold on page 51, F(2)(b): Limits on Packaging Design, which read “Imitating or having a semblance to any existing branded consumer products, including foods and beverages that do not contain marijuana.” The Commissioners discussed the words “semblance” and “resemblance,” and that “semblance” was required under the statute. Commissioner Title withdrew her hold.

Commissioner Title had an additional hold on page 62. Under “Consumer Verification,” she wanted to have a discussion on the part of the statute says that “regulations may not require a customer to provide a marijuana retailer with identifying information other than identification to determine the customer’s age, and shall not require the marijuana retailer to acquire or record personal information about customers other than information typically required in a retail transaction.” She raised a concern that requiring name, address, date of birth, date of delivery, and a signature would violate that. The Commissioners discussed needing an address for delivery and date of birth for compliance. The Chairman asked if the issue was the signature. Commissioner Flanagan stated that when alcohol is delivered, someone over 21 has to sign for it. Commissioner Title read the statutory requirement: ““Regulations made pursuant to this section shall not require a customer to provide a marijuana retailer with identifying information other than identification to determine the customer’s age, and shall not require the marijuana retailer to acquire or record personal information about customers other than information typically required in a retail transaction.” Commissioner McBride commented that a signature was typical for delivery transaction, such as alcohol. Commissioner Title withdrew her hold. The Chairman asked for any other holds on Section .105: “General Operation Requirements for Marijuana Establishments.”

The Chairman asked if there were any holds on Section .110: “Security Requirements for Marijuana Establishments;” Section .120: “Additional Operating Requirements for Marijuana Cultivation;” Section .130: “Additional Operating Requirements for Marijuana Product Manufacturers;” and Section .140: “Additional Operating Requirements for Retail Sales.” There were no holds.

The Chairman asked if there were any holds on Section .145: “Additional Operating Requirements for Social Consumption.” Commissioner Doyle asked for a hold on page 82 subsection (C), which currently reads “All marijuana products must remain in its original packaging and may not be further processed. All preparation of edibles must comply with the requirements under 935.CMR.500.105, 935.CMR.130, and 935.CMR.500.150.” Commissioner Doyle explained that Commissioner Title had pointed out that marijuana could not be cooked into food, such as in a marijuana bakery café, if it was required to stay in its original packaging and not be further processed, so there should be an exception to places licensed as restaurants with the appropriate statutory citation and “(comma) subject to any guidance developed by the Commission.” The Chairman commented about Mass Meals tax and commented that it would have to be discussed with DOR. Commissioner Doyle also expressed concern regarding homogeneity of dosing in products through the Responsible Vendor Training or other guidance.

Commissioner McBride read the proposed language: “All marijuana products must remain in the original packaging and may not be further processed, except social consumption operations that are licensed as a restaurant pursuant to (cite), subject to any guidance developed by the Commission.”

The Chairman asked if there were any other holds on Section .145, “Additional Operating Requirements for Social Consumption.” There were none. The Chairman asked if there were any holds on Section .150: “Edibles;” Section .160: “Testing;” Section .170: “Municipal Requirements;” Section .200: “Regulations for Martha’s Vineyard and Nantucket;” Section .300: “Inspections and Compliance;” Section .301: “Unannounced Purchase for Purpose of Testing (Secret Shopper Program);” Section .302: “Complaints Process;” Section .310: “Deficiency Statements;” and Section .320: “Plans of Correction.” There were no holds.

The Chairman asked if there were any other holds on Section .330: “Marijuana Establishments, Limitations of Sales.” Commissioners noted the section had not been included in the package. Commissioner Doyle explained it was taken from the Medical Use of Marijuana Regulations and read “If the commission determines that a marijuana establishment does not substantially comply with applicable provisions of regulations or the act, the commission may order the marijuana establishment shall not sell marijuana, after a date specified, to consumers.” “The commission shall not make such a determination until a marijuana establishment has been notified that the marijuana establishment does not substantially comply with applicable provisions of the regulations, or the act, that an order to limit sales is contemplated, and that the marijuana establishment has a reasonable opportunity to correct the deficiencies.” “An order that a marijuana establishment shall not sell marijuana, pursuant to –” – the first subsection of this regulation – “may be rescinded when the commission finds that the marijuana establishment is in substantial compliance with the applicable provisions of the regulations.” There were no objections.

The Chairman asked if there were any other holds on Section .340: “Summary Cease and Desist Order and Quarantine Order.” This section also was not in the package. Commissioner Doyle read the language as “A summary cease and desist order, or quarantine order, may be imposed by the commission prior to a hearing in order immediately to stop or restrict operations by a marijuana establishment to protect the public health, safety, or welfare. The commission may rescind or amend the summary cease and desist order, or quarantine order.” “If, based upon inspection, affidavits, or other evidence, the commission determines that a marijuana establishment, or the products prepared by a marijuana establishment, pose an immediate or serious threat to the public health, safety, or welfare, the commission may, 1.) Issue a cease and desist and/or quarantine order requiring cessation or restriction of any or all marijuana establishment operations and prohibit the use of marijuana produced by that marijuana establishment or, 2.) Issue a cease and desist order placing restrictions on a marijuana establishment to the extent necessary to avert a continued threat, pending investigation results.” “The requirements of the cease and desist order, or the quarantine order, shall remain in effect until the commission rescinds or amends such requirements or until such time as the commission takes final action on any related pending complaint and issues a final decision.” There were no objections.

The Chairman noted the same problem with Section .350: Summary Suspension Order.

Commissioner Doyle read it as ““Summary Suspension Order: The commission may summarily suspend any registration card or license if, and pursuant to, the regulations, pending further proceedings for denial of renewal or revocation of a license whenever the commission finds that the continued licensure poses an immediate danger to the public health, safety, or welfare.” There were no objections.

The Chairman asked if there any holds on Section .400: Marijuana Establishments Grounds for Denial of Renewal Applications and Revocation. Commissioner Title asked about moving fine to this part of the regulations. Commissioner McBride said she would look at whether that was consistent with other regulations.

The Chairman asked if there any holds on Section .415: “Void Marijuana Establishment Licenses.” This section was also missing from the packet. Commissioner Doyle read it as “A marijuana establishment registration is void if the marijuana establishment transfers its location without commission approval or ceases to operate.” There were no objections.

The Chairman asked if there were any holds on Section .450: “Effective Denial of Renewal or Revocation of Marijuana Establishment License Revocation of Marijuana Establishment Agent Registration and Surrender of a Registration;” Section .500: “Administrative Appeals;” Section .650: “Non-Conflict with Other Law.” There were no objections.

The Chairman asked if there were any holds on Section .700: “Waivers.” Commissioner Title asked if the Commission would need to create a form. Commissioner Doyle agreed that they would. Commissioner McBride added an insert to subsection (d): ““Request to provide to the commission written documentation in a form and manner as determined by the commission supporting its request for a waiver.” There were no objections.

The Chairman asked if there were holds on Section .750: “Notice;” Section .800: “Severability;” and Section .900: “Background Checks and Liability Standard for Licensure and Registration.” There were no objections.

Commissioner Doyle asked the Commission to go back to Definitions, because there were two definitions of marijuana product. The second of which was an old definition from the DPH regulations that should be deleted, so as to keep the one consistent with the statute. There were no objections.

Commissioner Title asked to return to the discussion of controlling person on page 18. The definition of “Controlling person” means, “an officer, board member, or other individual who has a financial or voting interest of 10% or greater.” Commissioner Doyle explained the intent was to emulate the language in the DPH regulations, but adjust it to the different circumstances of adult use. Commissioner Doyle suggested that the Commission could see if there was any feedback on the issue during the public comment and hearing process.

Commissioner Title had two more issues that came up during the stakeholder meetings. One came from the ABCC and one came from Smith, Costello, and Crawford, the lobbying firm. The first one was the idea that as the Commission are putting in so many provisions in place to try to encourage small businesses, that the Commission make sure there’s no undue influence between

a wholesaler and a retailer, in this instance the product manufacturer. The idea is that the Commission want it to be fair when a when a retailer is deciding what to put on their shelves, without undue influence. This is just something that's come up in alcohol regulation. There was a suggestion from the ABCC that the Commission adopt a model similar to the state of Washington, under Alcohol, which states "Any industry member or retailer, or any other person seeking a determination by the commission as to whether a proposed or existing financial interest has resulted in, or is more likely than not to result in, undue influence or has resulted, or is more likely than not to result, in an adverse impact on public health and safety, may file a complaint or a request for determination with the commission. Upon receipt of a request or complaint, the commission may conduct such investigation as it deems appropriate in the circumstances. If the investigation reveals the financial interest has resulted, or is more likely than not to result, in undue influence or has resulted, or is more likely than not to result, in an adverse impact on public health and safety, the commission may" – and the Commission may need to change this – "issue an administrative violation notice or notice of intent to deny the license or both."

The Chairman asked if "undue influence" was a legally defined term? He wondered if the Commission was going to be put in a situation where we're going to have to make judgements in a qualitative rather than defined. Commissioner Title asked Executive Director Collins to comment. Executive Director Collins stated this is a practice in Alcohol and it's something I think that the ABCC has been monitoring it and trying assign a value to what "influence" is. For instance, a wholesaler providing a new restaurant with coasters to use on their bar is them giving something of value that may induce behavior. When compared to providing an entire taps system in a restaurant; a line can be drawn between the two, but where is the line? It has been the subject of litigation. The Chairman commented that if it was not defined, then it is challenging the judgement of the commission. This is something the Commission did not discuss, but he believed it was an important issue. He asked when the Commission should discuss it and any other omissions by the Commission in this draft.

Commissioner Title commented that it was a new issue to her and was not related to anything that was already in the regulations, so she did not know whether the Commission could add something new. Commissioner Doyle commented that there was already a complaint process and authority to conduct an investigation under the statute and regulations, so there may not be a need to add anything new, but that between the draft regulation and the final regulation, they could incorporate the issue of "undue influence," but the Secretary of State may delay publication if it is not based on what is submitted during the public comment period. Commissioner Doyle commented that the Commission could also add it in when the regulations are reopened for the transfer of the Medical Use of Marijuana Program from the Department of Public Health. The Commissioners discussed the appropriate timing for the discussion. Commissioner McBride suggested that the Commission request an opinion from the Secretary of State's office as to whether adding language regarding "undue influence" would be considered an extensive change. Commissioner Title asked about the issue of adding things after the draft regulations were published. Commissioner Doyle explained that she believed it was a scope issue. The Commission wanted to make sure that people have notice of a particular issue. If a regulation is changed in a way that people would not have had notice about, the Commission may have to go out again to public hearing, which the Commission wants to obviously try to avoid since it has a statutory deadline. To address any issues when the Commission realizes it learned something valuable, the Commission can reopen

the regulations and go through the process again. Commissioner Title withdraw discussion on the second issue she identified.

The Chairman asked if there were any additional changes to what has been discussed to that point. There were not.

The Chairman asked for a motion to approve draft regulations entitled 935.CMR.500 as discussed and revised by the commission today, December 21st, 2017, subject to correcting clerical errors, formatting, and other ministerial corrections. Commissioner Flanagan made the motion. Commissioner Doyle seconded. All the Commissioners voted in favor of the motion.

The Chairman announced the next meeting as on January 9th of 2018. The Chairman thanked the Commission, those that participated in the process at the meetings and by providing input. He wished everyone happy holidays and adjourned the meeting.