

# Cannabis and cbd in Massachusetts



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# disclaimer

- This information is provided for legal education purposes only. It is not intended to constitute legal advice. Please consult your municipal or county attorney for legal advice relative to legal questions regarding marijuana.



# Conundrums



## Conundrum #1 host Community agreements

- HCA between city/town and cannabis establishment.
  - Responsibilities between host community and establishment.
  - May include community impact fee.
    - Reasonably related to costs imposed on city/town by operation on cannabis establishment.
    - No more than 3% of gross sales or for no longer than 5 years.



# Community impact fee

- In Host Community Agreement
  - Cannot be more than 3% of gross annual sales of the marijuana establishment.
  - Must be charged in exchange for a benefit that is specific and special to the marijuana establishment, and
  - Assessed in a way that justifies assessing the cost to “this limited group as opposed to the general public.”
    - Traffic design studies
    - Environmental impact studies
    - Substance use prevention programs



- Commission won't consider application until host agreement is in place.
- Allegations that municipalities are receiving larger community impact fees than actually necessary.
  - “voluntary donations”
  - Encourages “big” marijuana.
  - Discourages small cultivators and minority businesses.
- Commission voted 4 – 1 to not to review the agreements.
  - Law unclear and they don't have the authority to review agreements.
  - Need legislative amendment to current law.
- Lawsuit threatened.



## Conundrum #2 “Marijuana accessories”

- “ equipment, products, devices or materials of any kind that are intended or designed for use in . . . ingesting, inhaling or otherwise introducing marijuana into the human body.”





# Chapter 94C, § 1

- **Drug Paraphernalia:**

- Includes but is not limited to “water pipes . . . roach clips . . . electric pipes . . . air-driven pipes . . . bongs . . .”
- Only permitted if retailer had a tobacco sales permit.
  - Not true any more.

- **Now called “marijuana accessories.”**

- Not illegal.
- Head shops are perfectly legal businesses.
- No need for tobacco sales permit.



# Conundrum # 3

## Restrictions on public consumption of marijuana

- “No person shall consume marijuana in a **public place** or smoke marijuana where smoking is prohibited.”
- Includes smoking bars and adult-only retail tobacco stores and outdoor public spaces because these places are **public places**.
- Effectively bans smoking of marijuana everywhere except in a private homes and private cars.
- **Public housing is smoke-free (HUD).**
  - **Social equity issue.**
- Exemption: Social Consumption Establishments.



# Conundrum #4

- Cannot rely on Smoke-free Workplace Law to avoid social consumption establishments.
- Amended law removed “or non-tobacco product designed to be combusted and inhaled” from its definition of “smoking.”
- Now reads “the inhaling, exhaling, burning or carrying of a lighted or heated cigar, cigarette, pipe or other tobacco product intended for inhalation in any manner or form, including the use of electronic cigarettes, electronic cigars, ,electronic pipes or other similar products that rely on vaporization or aerolization.”
- Local secondhand smoke regulation use “old” definition which includes anything “that can be combusted” in definition of “smoking”.



# Social consumption establishments

- Commission voted 3-2 to pilot social consumption sites in 12 volunteer municipalities.
  - Provincetown, Amherst, Somerville, Springfield . . .
- Cannabis café licenses.
- “Event host licenses” for one-time events.
- Municipality would have discretion over types and numbers of licenses.
- Goal: to provide opportunities for minority applicants.
- Would collect data from the pilot program.
- State cannabis law would have to be amended.
- Smoking not permitted inside these establishments.
  - Vaping?



Conundrum # 5  
illegal on federal  
level





So what?

- Cash business – banks won't touch it.
- Previous administration's standard operating procedures vs. current administration's.
- US Atty Lelling said his office will focus its resources on "fighting the opioid crisis."
- Proceed at your own risk.

# And . . . There is already a lawsuit

- Several abutters in Cambridge sued Healthy Pharms (medical marijuana dispensary in Harvard Square).
  - Civil claim for violation of federal law (RICO).





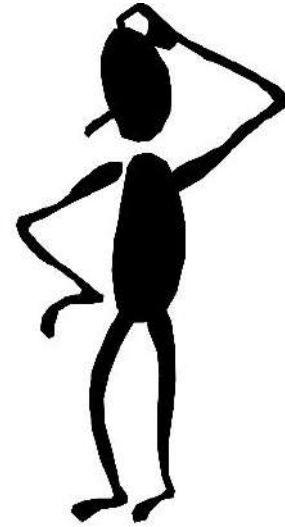
## Conundrum #6 – private clubs

- Statewide smoke-free workplace law narrowly exempts them.
- Local secondhand smoke laws can include them by prohibiting smoking in private clubs.
  - Would prevent “smoking” marijuana, but not edible marijuana.



# Local policies for adult-use cannabis

- Boards of Health can enact local regulations that are stricter than state law (not preemptive).
- BUT they cannot be “unreasonably impracticable.”
  - “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 ‘business person’ would not operate a marijuana establishment.”
    - **What does this mean?**





## Why regulate locally, when a state regulation exists?

- To enable local enforcement of state regulation.
  - Including compliance checks and inspections.
  - Assuring clean cultivation and distribution.
    - Resources?
- To address “head shops” by regulating where marijuana accessories can be sold.
- To enable issuance of local Operating Permits.
  - Resources?
- To enable local penalties for selling to someone under the minimum legal sales age.
- To incorporate certain tobacco control strategies into marijuana regulations.
  - No self-service, no vending machines, no roll-your-own machines, etc.



**Public Health**  
Prevent. Promote. Protect.



# Possible strategies



1. Require compliance with sanitary requirements in 105 CMR 500.000 for onsite preparation and consumption of edible marijuana products (good manufacturing practices).
2. Require compliance with 105 CMR 590.000 for food service and retail food establishments (minimum standards for food establishments).
3. Require an Operating Permit for all classifications of Marijuana Establishments.
  1. Resources?

# Possible strategies

4. Incorporate nuisance law into local regulation.
  - Addresses processing, packaging or repackaging odiferous marijuana products.
  - Addresses outdoor smoking or vaping on residents' decks and social consumption decks.
5. Ban out of package sales.
6. Ban vending machine sales.
7. Ban self-service displays.
8. Ban Non-Residential Roll-Your-Own machines.



# Possible strategies

9. Require local enforcement including compliance checks and inspections.
  - Funding from host agreement or operating permit fees.
10. Prohibit distribution of coupons for marijuana.
11. Prohibit free commercial sampling of marijuana.
  - Happening in vape shops.



## Possible strategies

12. Require permit for marijuana establishment agents.
13. Restrict marijuana accessories to marijuana establishments and adult-only retail tobacco stores.
  - Fall River, Framingham, Norwood
14. Increase minimum legal sales age to 25.
15. Add preschool programs, youth centers and playgrounds to 500-foot buffer zone.
16. Prohibit marijuana establishments from selling alcohol.
17. Prohibit marijuana establishments from holding a tobacco sales permit.



# Possible strategies

17. Permit and regulate “grow your own” operations.

- Especially in multi-unit dwellings.

18. Prohibit flavored combustible or vaped marijuana products.



## Oregon death is 2nd linked to vaping, 1st tied to pot shop

by GILLIAN FLACCUS | Associated Press | Wednesday, September 4th 2019



FILE - In this April 11, 2018, file photo, an unidentified 15-year-old high school student uses a vaping device near the school's campus in Cambridge, Mass. (AP Photo/Steven Senne, File)



PORTLAND, Ore. (AP) — Public health officials in Oregon said Wednesday that a person who recently died of a severe respiratory illness had used an electronic cigarette containing marijuana oil from a legal dispensary, the second death linked to vaping nationwide and the first tied to a vaping product bought at a pot shop.

cbd - cannabidiol





# Is it pot or is it not?

- “Marijuana”
  - All parts of any plant of the genus Cannabis, not exempted . . .
  - Hemp – one of the exemptions.
- “Hemp”
  - The plant of the genus Cannabis with a delta-9-tetrahydrocannabinol that is not more than 0.3%.
- What about CBD that is not hemp-derived?
  - MA law is silent.



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- “Cannabidiol”
  - Naturally occurring cannabinoid constituent of cannabis.
  - 1 of at least 113 cannabinoids identified in hemp plants.

# Two categories of cannabis plants

- Hemp plants
  - Grown for fiber and seed oil.
  - Industrial hemp – sourced from a low-resin agricultural crop.
- Drug plants
  - Include euphoric THC-rich plants and non-euphoric CBD-rich plants.
  - High-resin horticultural crop, hand-harvested, dried, trimmed and cured.
- Difference – amount of resin.
- And then there are “hybrids”

# Can You Get "High" Off Hemp?

*"Your lungs will fail before your brain attains any high from smoking industrial hemp"*

## Hemp vs Marijuana

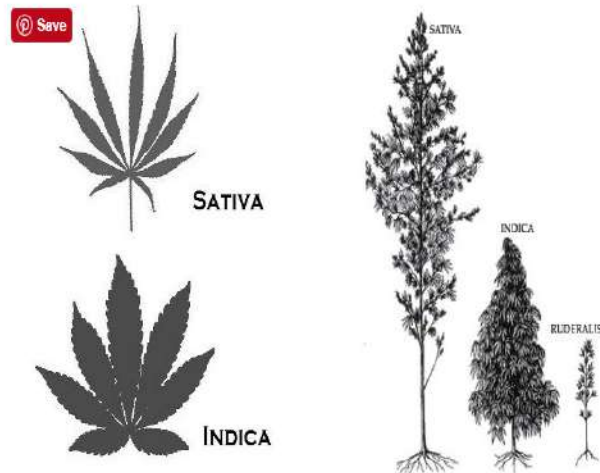
*The Difference Between Hemp and Marijuana*

Type	Is it Cannabis?	Chemical Makeup	Psychoactive?	Cultivation	Applications
<b>Hemp</b>	Yes	Low THC (< 0.3%)	No	Requires minimal care. Adaptable to grow in most climates.	Automobiles, body care, clothing, construction, food, plastic, etc.
<b>Marijuana</b>	Yes	High THC (5%-35%)	Yes	Grown in carefully controlled atmosphere	Medical and recreational use

Top CBD Reviews. We evaluated the top online brands under 10 different categories. [Learn more](#)

# Cannabis Sativa vs Cannabis Indica

*Difference explained in official terms*



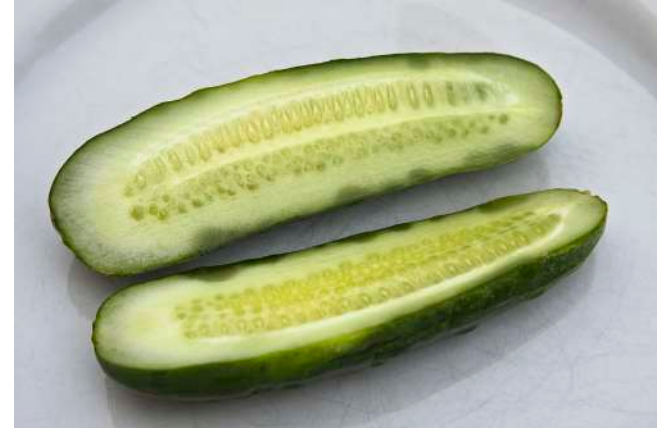
Sativa strains are typically taller, loosely branched and have long, narrow leaves. They are usually grown outdoors and can reach heights of up to 20 feet. Sativa plants typically have higher concentration of CBD enzymes, essentially causing no mind-altering effect.

Indica strains are shorter, densely branched and have wider leaves. They are better suited for growing indoors. Indica plants contain higher THC content, which has an intoxicating effect of causing a "body buzz".

\*Many hybrids of these plants have been developed recently, so it is more important to examine the exact THC level of a plant rather than strictly categorizing them "sativa" or "indica"

Let's make it even  
more  
complicated!

CBD CAN BE FOUND IN THE FLOWERS, LEAVES AND  
STICKY RESIN OF EACH TYPE OF PLANT!



## Massachusetts Department of agricultural resources (MDAR) interim policy

- Commercial Industrial Hemp Program – April 30, 2018
  - Hemp and Industrial Hemp (Hemp) are not Cannabis.
  - Must be a **licensed** “grower and/or processor”.
    - Remains in place until final regulations are promulgated.
  - “No retail licenses are available in MA.”
  - So what about current “CBD infused” products?
  - What about non hemp-derived CBD?





**“Policy Statement”**  
sale of hemp-derived products in the commonwealth



# Controlling federal law

## 2018 Farm Bill – 12.20.18

- Hemp is a legal agricultural crop.
  - Cultivation governed by USDA and MDAR (if approved by USDA).
  - FDA has legal authority to address public health requirements for hemp-derived products.
    - Federal Food, Drug, and Cosmetic Act
      - FDA prohibited any food or other “consumable” product containing CBD from interstate commerce without its approval.
        - Cannot claim “therapeutic benefit” unless approved by FDA.
          - Epidiolix is approved.
        - Cannot sell food containing CBD (or THC).
      - Hemp seed oil, hulled hemp seeds and hemp seed protein are generally recognized as safe (GRAS).

## State law – general laws chapter 128, §§ 116 – 123 (agriculture)

- MDAR must regulate ALL hemp and industrial hemp activities.
- Must administer a licensing and registration program:
  - Cultivation, processing, and sale.
- Oversight responsibility for approving the sale.
- DPH is responsible for food safety.
  - Issued policy guidance
    - Prohibits the manufacture or sale of any food or other consumable products containing CBD.
    - Local boards of health have the authority to enforce public health laws.
      - Cannabis-infused products are not food, but CBD-infused products are pursuant to state regulation (at least so far).



“MDAR construes the term ‘sell’ or ‘sale’ to include the following transactions.”

- Massachusetts licensed grower to Massachusetts licensed grower.
- Massachusetts licensed grower to Massachusetts licensed processor.
- Massachusetts licensed processor to Massachusetts retail facility (store).
- Any person or entity that engages in the activities listed above are deemed to be licensed provided:
  - They are selling “approved” hemp-derived products **AND**
  - They are licensed as a “grower” or “processor”.
  - **WHAT ABOUT A RETAILER?**



# Approved hemp-derived products

- Hemp seed, hemp seed oil, hulled hemp
- Hemp seed powder
- Hemp protein
- Clothing
- Building material
- Items made from hemp fiber
- Flower/plant from a Mass. licensed grower to a Mass. licensed grower or processor.

# Hemp products not approved for sale

- Food product containing CBD;
- Any product containing hemp-derived CBD that makes therapeutic/medicinal claims;
- Any product that contains hemp as a dietary supplement;
- Animal feed that contains any hemp products;
- Unprocessed or raw plant material, including the flower that is meant for end use by a consumer.

So what are we (locals) supposed to do about CBD?

- Retail stores are generally not licensed as a “grower” or a “processor”
- Local policy options:
  - CBD Sales Permit
  - Age-restrict product
  - Prohibit vending machines
  - Prohibit self-service displays
  - Enforce against edible CBD products
  - Report illegal sales to MDAR
  - Report illegal sales of edibles to MDAR and DPH?



