



CANNABIS IN MASSACHUSETTS, REVIEW AND UPDATES, INCLUDING SOCIAL CONSUMPTION ESTABLISHMENTS

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MAHBB

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Quick Review of Role of Municipalities

- May implement a local licensing process, including fees and enacting local regulations.
 - Providing they are not “unreasonably impracticable.”
 - Host Community Agreements (HCA)
- May restrict number of marijuana establishment (ME) to 20% or more of the number of retail liquor licenses.
 - Ordinance, bylaw, or regulation.
 - To further restrict, must do it at municipal election.
- May not increase buffer zone of 500 feet from public or private schools (K-12).
- May authorize on-premises Social Consumption Establishments through **ordinance, bylaw or local voter initiative petition. NEW.**



An Act Relative to Equity in the Cannabis Industry

July 31, 2022

- **Industry is not as diverse and equitable as originally intended.**
 - Less than 6% of cannabis businesses were led by economic empowerment entrepreneurs or connected to participants in the social equity program. (20 out of 346 – July 2022)
 - Original law (2018) was intended to provide economic opportunities for those previously harmed by inequitably enforced drug laws.
 - In 2014, 6 years after decriminalization of cannabis, blacks were still more than **7 times more likely** than whites to be arrested for selling it. (American Civil Liberties Union study).
- **Some municipalities have taken advantage of their leverage over cannabis businesses.**
 - HCAs
 - Community impact fees.
- **There are STILL NO social consumption establishments in MA.**



Summary of New Law's Key Provisions



Challenges with Original HCAs

- **Original HCA law**
 - CCC would not consider an application until HCA was in place.
 - Applicants had to have lease in place before HCA could be signed.
 - Community impact fees were not related to reasonable costs of city/town.
 - “voluntary donations” from large out of state companies.
 - Small cultivators and social equity applicants could not compete.
- **Law not clear whether CCC could review HCAs.**
 - CCC members voted 4 – 1 that they did not have the legal authority to review agreements.

New HCA Law

- **Much more oversight of HCA's**
 - Focused on municipality's actions.
 - Applicants must include copies of their HCAs as part of initial and annual renewal applications.
 - CCC will review them for compliance with new law.
 - CCC authorized to reject HCA.
- **Community Impact Fees (CIFs) – part of HCA**
 - Must be “reasonably related” to costs on municipality.
 - Cannot include any additional payments or obligations.

Host Community Standards and Policies for Social Equity now Required

- Existing host communities must establish policies no later than July 1, 2023.
 - No policies established yet – part of proposed regulation.
- New host communities must establish policies before signing a new HCA.
- Stiff monetary penalties for noncompliance.
- CCC instructed to create regulations to implement law relative to HCAs by November 9, 2023.
 - Hearing held on September 8, 2023.



Proposed Regulations of HCAs

- Regulations apply to all HCAs, including those executed *before* the final regulations are promulgated.
- No host community may impose an “unreasonable” condition or a term that is “unreasonably impracticable” in an HCA.
- Host community must submit an itemized invoice of its impact fees to the ME annually.
- CCC approval of HCA may be conditioned on host community being in good standing with CCC relative to any other HCA it has.
- 1st payment to municipality not due until first annual license renewal.
- Must not contain any additional required payments or obligations.
- Cannot require any upfront charges on ME.
- Procedure for reviewing HCAs.
- Process for determining “minimum acceptable equity standards.”



Testimony in Opposition to HCA Regulations

- Massachusetts Municipal Association (MMA), Massachusetts Municipal Lawyers Association (MMLA), Athol, Brookline, Medford, Pittsfield, Rockland, etc.
- Retroactive effect on existing HCAs are illegal.
- Unduly burdensome requirements to meet equity requirements.
- New administrative burdens create an unfunded mandate.
- All of this will “stifle the growth” of the cannabis market and frustrate the purpose of the new law.

Social Equity Businesses (SEB)

- ME with a majority ownership of persons eligible for the **Social Equity Program** or persons who qualify as an **Economic Empowerment Applicant**.
- **Social Equity Program**
 - Free, statewide technical assistance and training program to create sustainable pathways into the industry for persons most impacted by the war on drugs.
 - Disproportionate arrests and incarceration for cannabis.
- **Economic Empowerment Applicant**
 - Majority of owners belongs to persons who have lived in Areas of Disproportionate Impact for 5 of the last 10 years.
- **Municipalities with 1 or more SEBs will receive quarterly distributions of 1% of the total sales of the SEB.**



Cannabis Social Equity Trust Fund

- Provide grants and loans to social equity program participants and economic empowerment priority applicants.
- Marijuana Regulation Fund
 - Receives all revenue derived from marijuana excise tax, application and licensing fees, and industry penalties.
- 15% of revenues in the Marijuana Regulation Fund are now directed to the Cannabis Social Equity Trust Fund.
- Proposed regulations would require host communities to donate at least 3 % of each community impact fee (part of HCA) to Trust Fund.



New Social Consumption Establishments Law

- Authorization of Social Consumption Establishments by adopting a city ordinance, town bylaw, or by a local voter initiative petition.
 - Municipal election no longer required.
- Operators of Social Consumption Establishments limited to **Social Equity Program participants and Certified Economic Empowerment Priority applicants.**
- **Current regulations:**
 - Cannot bring in cannabis, can only use what is purchased at establishment on-site.
 - Cannot leave with cannabis.
 - Cannot smoke or vape tobacco.
 - Can vape cannabis indoors.
 - Cannot smoke cannabis indoors.
 - Sale of edibles limited to pre-packaged shelf-stable items.
 - No alcohol or tobacco sales permitted.

Rationale for Social Consumption Establishments

- Chapter 94G, Section 13: “No person shall consume marijuana in a public place . . .”
 - Includes smoking bars and adult-only retail stores because these are **public places**.
- Effectively bans cannabis smoking everywhere except a private home and car.
 - The Summit Lodge, Worcester, MA
- Public housing is smoke-free
- **Social equity issue.**



CCC will be amending current Social Consumption Regulations

- Listening sessions held this summer.
- Many speakers in favor of combustible cannabis indoors.
- Many speakers in favor of permits for one-day events like weddings.
- General questions:
 - Will serving limits be implemented?
 - Will search procedures be required to assure patrons are not bringing in their own product?
 - Will local health inspectors be permitted to inspect edible products?
 - Will edibles be considered “food” and thereby subject to food code?
 - Will edibles be expanded to include pizza, pasta, etc.?
 - What about nuisance complaints for smoking outdoors?



Conundrum – Legal Authority of Boards of Health

Boards of Health can enact local regulations that are stricter than state law.

No preemption.

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 businessperson would not operate a marijuana establishments.

What does this mean?



Conundrum – Smoking in Social Consumption Establishments

Statewide smokefree workplace law (G.L. c. 270, § 22).

Amended definition of smoking (2108).

Removed “or non-tobacco product designed to be combusted or inhaled.”

Only addresses smoking of **tobacco products**.

Local secondhand smoke regulations can define smoking more broadly.

Can be stricter than state law.

Would a local regulation that defines smoking more broadly, including smoking of non-tobacco products, be unreasonably impracticable?



Conundrum

Federal Controlled Substance Act (CSA).

Still illegal at federal level.

COLE memo – Obama Administration

DOJ will not get involved if there is compliance with state law.

Trump Administration

Revoked COLE memo.

Biden Administration

Enforcement of CSA relative to cannabis is not a constructive use of federal resources.

Cash business

Safe Banking Act pending . . .

Social Justice Bill pending . . .



Why regulate locally when the CCC already regulates cannabis?

- To enable local enforcement of the state regulations.
 - Including local compliance checks and inspections.
 - Assuring clean cultivation and distribution.
 - Local food code enforcement.
- To address “head shops” by regulating where “marijuana accessories” can be sold.
- To enable issuance of local Operating Permits.
- To enable local penalties for selling to someone under 21 (except medical marijuana patients).



Possible local strategies

- Require compliance with sanitary requirements in 105 CMR 590.000 for onsite preparation and consumption of edible marijuana products (good manufacturing practices).
- Require compliance with 105 CRM 590.000 for food service, retail food establishments and social consumption establishments (minimum standards for food establishments).
- Require an Operating Permit.
- Address nuisances.
 - Addressing odiferous smells.
 - Might address smoking and vaping on decks.
 - Social consumption establishments.

Possible local strategies (cont.)

- Incorporate local tobacco control strategies:
 - Prohibit distribution of coupons for cannabis.
 - Prohibit free sampling.
 - Prohibit vending machines.
- Restrict sale of marijuana accessories to marijuana establishments and adult-only retail tobacco stores.
 - Framingham
- Prohibit marijuana establishments from holding a local tobacco sales permit.
- Does your health department have the resources to regulate locally?

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