

An Act Relative to Equity in the Cannabis Industry Marijuana Reform - Part II October 19, 2022

This is the second of a two-part memorandum exploring extensive amendments to the Commonwealth's marijuana laws. The first part of the memorandum is linked [here](#). Effective November 9, 2022, "An Act Relative to Equity in the Cannabis Industry" (the "Act"), which makes changes to the host community agreement process and calculation of community impact fees, further revises the process for approval of social consumption establishments and emphasizes goals for increasing participation of social equity businesses in the industry.

Under the prior law, although social consumption establishments were allowed in theory, a drafting technicality meant there was no lawful mechanism in place for communities to allow these establishments within their borders. The Act directly addresses this issue, creating two distinct paths for municipal approval for social consumption of marijuana or marijuana products on the premises where they are sold: (1) adoption of an ordinance or bylaw allowing so-called "cannabis cafes", OR (2) approval by the voters at an election.

Process for Allowing Social Consumption Establishments

Adoption or Amendment of General or Zoning Bylaws:

1. The Act does not specify whether a general or zoning bylaw or ordinance is required to allow social consumption establishments. We anticipate, therefore, that both types of local laws may be considered. We urge municipalities to review our prior guidance on the Massachusetts Supreme Judicial Court's decision in [The Haven Center, Inc. v. Town of Bourne](#), [here](#), which sets forth criteria to assess whether a local law titled as a "general" bylaw or ordinance, if challenged, may nevertheless be deemed to be a zoning regulation subject to the procedural requirements of G.L. c.40A, §5.
2. Adoption of such a bylaw or ordinance would follow the normal course, including approval by the legislative body, and, for zoning, notice, hearing and a recommendation from the Planning Board.
3. Those communities that wish to allow social consumption establishments to locate within their borders through a general bylaw or ordinance will want to first review their existing zoning laws to determine whether such laws prohibit any use not specifically authorized. If so, zoning revisions may be required.

Local Election:

1. A petition process may also be used to present the social consumption issue directly to the voters;
2. The Secretary of the Commonwealth will create the petition form;
3. The petition must be signed by not less than 10% of the voters who voted in that municipality at the preceding biennial state election;

4. If the petition is certified as having sufficient signatures, the following question will appear on the ballot, followed by a concise summary of the issue prepared by the town counsel or city solicitor:

Shall [city or town] allow the sale of marijuana and marijuana products, as those terms are defined in section 1 of chapter 94G of the General Laws, for consumption on the premises where sold, a summary of which appears below?

5. If the petition is certified, and the next regular municipal election is more than 35 days away, the question and summary must be added to that ballot at that regular election; and
6. If the petition is certified closer to the date of the municipal election, and therefore is ineligible for inclusion on the local ballot, the question may appear on the state ballot if that municipality provides written notice to the Secretary of State not later than the first Wednesday of August preceding the state election.

Eligibility For Social Consumption Establishment License

The Massachusetts Cannabis Control Commission (the “CCC”) previously authorized a pilot program in which 12 municipalities were authorized, once the law allowed, to host marijuana establishments in which adults ages 21 and older could consume marijuana on site (“Pilot Program”). The CCC may now issue licenses for social consumption establishments in the Pilot Program communities, on a limited, exclusive basis, to economic empowerment priority applicants or social equity program participants, microbusinesses, and craft marijuana cooperatives. This authority will be available for the period of 36 months from the date the first social consumption establishment receives a notice from the CCC to commence operations; provided, however, that the CCC is authorized to extend the so-called “exclusivity” period following a determination that its goals of promoting and encouraging full participation in the regulated marijuana industry by certain entities, people from communities previously disproportionately harmed by marijuana prohibition, farmers, and businesses of all sizes, have not been met.

Social Consumption Establishments

A municipality may:

- Enact and enforce local bylaws and ordinances governing the time, place and manner of marijuana establishment operations, including social consumption locations;
- Prohibit or limit the number of marijuana establishments, including social consumption establishments; and
- Establish civil penalties for public consumption.

A marijuana social consumption establishment may:

- **Not** sell alcohol or tobacco products;
- **Not** gift or discount marijuana and marijuana products;
- Sell food pre-packaged, shelf-stable and drink items other than edibles **if** all necessary local licenses and permits have been obtained; and
- Sell products between the hours of 8:00 A.M. and 9:00 P.M. unless otherwise explicitly authorized.

At licensed social consumption establishments, individuals 21 years of age old or older may:

- **NOT** possess or consume marijuana or marijuana products not purchased from the social consumption establishment;
- **NOT** consume alcohol or smoke tobacco indoors;
- Consume pre-packaged shelf-stable products, including food and drink;
- Vape indoors with appropriate HVAC systems; and
- Smoke outdoors, with municipal permission, in designated areas in compliance with outdoor tobacco smoking rules.

Municipalities are encouraged to review their existing bylaws and ordinances to determine whether they sufficiently address the placement and treatment of social consumption establishments.

Social Equity Businesses

Consistent with the name of the Act, the CCC must create and oversee “a social equity program to encourage and enable full participation in the marijuana industry of people from communities that have been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities.” A social equity business is defined as a “marijuana establishment with not less than 51 per cent majority ownership” of individuals who meet the requirements of G.L. c.94G, §22, or whose ownership qualifies it as an “economic empowerment priority applicant” under the applicable CCC regulations. The Act provides further that the CCC must establish policies and procedures for municipalities to promote and encourage such a result.

The Act also establishes an incentive to encourage municipalities to negotiate host community agreements with social equity businesses and economic empowerment priority applicants. Municipalities hosting such entities will receive quarterly from the state 1% of the 10.75% excise related to retail sales from those entities.

We anticipate additional guidance from the state concerning implementation of on-site social consumption of marijuana and the role of the CCC in promoting social equity businesses.

In the meantime, for further information on this topic, please call your KP Law attorney at 617.556.0007 or contact Attorney Nicole Costanzo at ncostanzo@k-plaw.com.

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