

Cannabis Control Commission DRAFT Regulations – 935 CMR 500.00 A Municipal Top 10 List

On December 21, 2018 the Cannabis Control Commission (“CCC”) approved **draft** regulations, 935 CMR 500.00, for Adult Use of Marijuana (“Draft Regulations” or “Draft Regulations 935 CMR ____”) implementing c.334 of the Acts of 2016 *The Regulation and Taxation of Marijuana Act*, as amended twice, most notably by c.55 of the Acts of 2017, *An Act to Ensure Safe Access to Marijuana*.

The following “**Top 10**” List highlights a variety of regulations relevant to municipalities.

1. Twelve Types of Licenses for Adult Use Marijuana

The CCC has created 12 types of licenses for adult use marijuana ranging from cultivation and processing to social consumption, as listed below. (Draft Regulations 935 CMR 500.050). In drafting zoning, municipalities must be aware of these different license types, and decide whether and how to address them.

Cultivation	Third Party Transporter
Craft Marijuana Cultivator Cooperative	Existing Licensee Transporter
Microbusiness	Research
Manufacturing	Independent Testing Laboratory
Retail (brick and mortar)	Social Consumption – Primary Use

2. Community Outreach Requirements for Adult Use Marijuana Applicants

The Draft Regulations provide opportunities for municipalities and members of the public to be involved in the State licensing process for all types of adult use marijuana licenses. Applicants are required to conduct a “community outreach hearing” within 6 months prior to the application consistent with the Commission’s *Guidance for License Applicants on Community Outreach*. (Draft Regulations 935 CMR 500.105).

3. Documentation of Compliance with Local Zoning Ordinances and Bylaws

The Draft Regulations require the CCC, in its review of a license application: (a) notify the municipality of the application; and (b) request that the municipality respond within 60 days of the date of the correspondence that the applicant’s proposed marijuana establishment (i) does or does not comply with local bylaws or ordinances, and (ii) is not within 500 feet of a pre-existing public or private school providing education in kindergarten or grades 1 through 12 (unless the municipality has adopted an ordinance or bylaw that reduces that distance).

Importantly, if a municipality fails to submit certification within 60 days stating that the applicant is not in compliance with local law, the CCC shall consider certification submitted by the applicant to be sufficient evidence of compliance with municipal bylaws or ordinances. (Draft Regulations 935 CMR 500.101(A)(1)(h)).

4. Buffer Zones

The Draft Regulations 935 CMR 101(A)(1)(h)(i) buffer requirement described above is less restrictive than the default buffer requirement applicable to medical marijuana treatment centers under the Department of Public Health regulations, 105 CMR 725.110(A)(14), which include in the list of uses to which a buffer applies daycare centers, or any facility in which children commonly congregate.

5. Host Community Agreements

Pursuant to G.L. c.94G §3(d) a Host Community Agreement (“HCA”) between an applicant and a municipality is a requirement for adult use marijuana establishments and medical marijuana uses. The Draft Regulations 935 CMR 101(A)(1)(f) requires that the HCA be negotiated prior to the filing of an application with the CCC and that the applicant and municipal contracting authorities sign a single page certification evidencing that the applicant and host municipality have executed the HCA.

6. Authority to Establish Local Licensing/Fees

The Draft Regulations appear to allow for local licensing of marijuana establishments. Pursuant to Draft Regulations 935 CMR 500.170(B), “nothing in 935 CMR 500.000 shall be construed so as to prohibit lawful local oversight and regulation, including fee requirements, that does not conflict or interfere with the operation of 935 CMR 500.000.”

7. Marketing/Advertising

Draft Regulations 935 CMR 500.105(D) imposes comprehensive regulations governing the marketing and advertising of adult use marijuana. These regulations may, in some instances, impose restrictions that are different from local sign ordinance/bylaw requirements, such as a prohibition on the installation of any neon signage and a restriction on any external signage that is illuminated beyond the period of 30 minutes before sundown until closing. Under Draft Regulations 935 CMR 500.105(D), external signage must additionally comply with all local ordinances and requirements. Thus, municipalities retain authority to regulate local signs relating to marijuana uses.

8. Co-location of Medical and Adult Use Marijuana Establishments

The Draft Regulations provide restrictions on the manner in which a co-locating medical marijuana treatment center and adult use marijuana establishment handle product and interact with customers. Pursuant to Draft Regulations 935 CMR 500.140(H), a marijuana retailer that is co-located with a medical marijuana treatment center shall erect a physical barrier to separate within the sales area marijuana and marijuana products for medical use from marijuana for adult use.

9. Social Consumption Establishments

The Draft Regulations 935 CMR 500.050 create licenses for social consumption establishments (both primary and mixed use) as a sub-class of retail licenses and provide additional operational requirements for these types of uses in 935 CMR 500.145.

This is significant. Previously, the common interpretation of the law was that the only way on-premises consumption could be authorized was by approval of a question appearing on the state election ballot by petition of the residents of a city or town. By including a definition of “social consumption establishments” within the definition of marijuana retailer, it appears that if no changes are made to the regulations, a municipality that authorizes marijuana retailers may also be authorizing social consumption establishments. ***Therefore, municipalities that allow for retail marijuana sales but do not intend to allow for on-site social consumption (absent a citizen petitioned ballot vote pursuant to G.L. c.94G, §3(b)) may, in the absence of any change to the Draft Regulations, need to be pro-active in prohibiting social consumption establishments as a separate use.***

10. Special Regulations for Nantucket and Martha’s Vineyard

Due to the federal restrictions on the transportation of controlled substances over federally controlled navigable waterways, the Draft Regulations provide special accommodations for the islands of Nantucket and Martha’s Vineyard by exempting establishments located on the islands from using independent testing laboratories until such time as a laboratory is located on the respective island. The regulations provide further, however that island marijuana establishments must still test marijuana and marijuana products in a manner that, while not “unreasonably impracticable”, “adequately protects the public health in the opinion of the Commission.”

In summary, the Draft Regulations have answered some, but certainly not all, of the issues municipalities face as they begin to regulate this emerging industry. The CCC will be soliciting **public comment** on the Draft Regulations through February 15, 2018. A number of public hearings are scheduled to take place throughout the Commonwealth. More information on the CCC’s public hearing schedule, as well as their guidance document for municipalities, is available on their website at <https://www.mass.gov/orgs/cannabis-control-commission>. The final regulations will be released no later than March 15, 2018. Please note that the provisions highlighted herein may be subject to change in the final version of the regulations.

We continue to monitor closely the action taken and guidance issued by the CCC. You may also wish to review our Guide to the Law Legalizing Non-Medical Marijuana, which includes an implementation timeline and analysis of various issues.

If you have any questions concerning regulation of non-medical marijuana, please contact Attorneys Joel Bard (jbard@k-plaw.com), Katherine Laughman (klaughman@k-plaw.com), or Brian Riley (briley@k-plaw.com) at 617.556.0007. Members of our Labor and Employment Practice Group are also available to assist with employment-related questions.

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