

Cannabis Control Commission Regulatory Amendments Impacting Municipalities

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On October 18, 2019, the Cannabis Control Commission (“CCC”) published its revised regulations for Adult Use of Marijuana (935 CMR 500.000). The revised regulations include a limited and phased roll out of adult use marijuana delivery services to consumers and a pilot program for social consumption establishments. Additional changes to the CCC regulations, which may have an impact on local oversight and control of marijuana establishments and Host Community Agreements, are summarized below.

I. New Types of Adult Use Marijuana Establishment Licenses

A. *Social Consumption Pilot Program*

- Under the Social Consumption Pilot Program, up to 12 communities in Massachusetts will be selected by the CCC to host marijuana establishments in which adults ages 21 and older may consume cannabis on site. 935 CMR 500.101(2)(a).
- Licenses for Social Consumption Establishments will be available to businesses controlled by and with majority ownership comprised of Microbusinesses, Craft Marijuana Cooperatives, certified Economic Empowerment Priority Applicants, and Social Equity Program Participants for an exclusivity period of two years from the date the first Social Consumption Establishment receives notice from the CCC to commence operations. 935 CMR 500.050(6)(b).
- The Commission will collect data to determine whether goals of the exclusivity period are met during the initial two-year pilot program and decide whether to extend exclusivity for an additional year or make the license type generally available. 935 CMR 500.050(6)(b)(3).
- Social Consumption Establishments will be authorized allow consumers to purchase and consume pre-packaged, shelf-stable products, vape indoors with an appropriate HVAC system, and smoke outdoors with municipal permission in designated area in compliance with outdoor tobacco smoking rules.

NOTE: The Social Consumption Pilot Program will not commence until there is a legislative change in state law that would allow municipalities to authorize social consumption in their communities.

B. Delivery-Only Licensees

- The regulations define a Delivery-Only Licensee as “an entity that is authorized to deliver directly to consumers from a Marijuana Retailer or to Registered Qualifying Patients or Caregivers from a Medical Marijuana Treatment Center (MTC) and that does not provide a retail location accessible to the public.” 935 CMR 500.002
- Delivery-Only Licensees will not be permitted to operate a brick and mortar retail location and must obtain marijuana and marijuana products from other licensed Marijuana Retailers or MTCs with whom they have exercised a Delivery Agreement. 935 CMR 500.050(10)(a).
- Delivery-Only Licenses will be offered exclusively for certified Economic Empowerment Priority Applicants, Social Equity Program Participants, and Microbusinesses with a Delivery Endorsement from the Commission, for an initial period of two years. 935 CMR 500.050(10)(b); 935 CMR 501.145(1)(a)-(d).
- Delivery-Only Licensees may deliver to municipalities in which: (1) retail sales are permitted; (2) Delivery-Only Licensee businesses are located; and (3) Marijuana Retailer bans exist but that that “opt-in” by notifying the CCC that delivery may operate within its borders. The method for “opting in” is not prescribed by the CCC regulations and may be accomplished through bylaw, ordinance or regulations. 935 CMR 500.145(2)(h).
- Delivery will be prohibited to dormitories and other university housing, commercial hospitality operations including hotels and bed-and-breakfasts, and federally subsidized housing. 935 CMR 501.145(2)(c).
- Limitations on the time for delivery shall comply with all municipal bylaws and ordinances, provided, however, that all deliveries must be completed before 9:00 p.m. local time (or the time determined by municipal bylaw or ordinance, whichever occurs first) and deliveries shall not occur between the hours of 9:00 p.m. and 8:00 a.m., unless otherwise explicitly authorized by bylaw or ordinance. 935 CMR 500.145(1)(i).
- To ensure marijuana products are distributed to consumers of legal age and correct identity, adult consumers who choose to use delivery services will first need to pre-verify their age and identity through the marijuana retailer from which they intend to order products, either in person or online. 935 CMR 500.140(2)(d). Appropriately licensed medical patients are exempt from this requirement.
- To maximize the safety and security of delivery drivers, consumers, and patients, the CCC regulations require safety and security protocols consistent with those required for retail operation safety, including the use of vehicle cameras for all deliveries, and body cameras for adult-use deliveries. 935 CMR 500.110(8)(b).

- Video of adult-use cannabis deliveries will be retained for a minimum of 30 days or the duration of an investigation by the Commission or law enforcement and may not be shared with any third party not explicitly authorized by the regulations without a court order or warrant. 935 CMR 500.110(8)(b)(5).

NOTE: Municipalities seeking to allow Delivery-Only Licensees as a permitted business, or Delivery-Only Licensees to deliver within their community may need to amend local bylaws, ordinances or regulations to permit such uses.

II. General CCC Regulatory Amendments Impacting Municipalities

A. *Community Impact Fee Reporting Requirements*

- The CCC has imposed a new license renewal requirement for Marijuana Establishments which requires that a Marijuana Establishment shall submit as a component of the renewal application documentation that the establishment requested from its Host Community the records of any cost to a city or town reasonably related to the operation of the establishment, which would include the city's or town's anticipated and actual expenses resulting from the operation of the establishment in its community.
- The applicant shall provide a copy of the electronic or written request, which should include the date of the request, and either the substantive response(s) received or an attestation that no response was received from the city or town. The CCC regulations mandate that the request to the municipality should state that, in accordance with M.G.L. c. 94G, § 3(d), any cost to a city or town imposed by the operation of a Marijuana Establishment or MTC shall be documented and considered a public record as defined by M.G.L. c. 4, § 7, cl. 26. 935 CMR 500.103(4)(f).

NOTE: Municipalities which have signed HCAs with Marijuana Establishments may want to consider implementing an interdepartmental system for recording and documenting the date, time and nature of any type of municipal engagement with such businesses in order to fully comply with the requirements of G.L. c.94G, §3(d) and to capture the costs imposed on the municipality by the operation of the Marijuana Establishment.

B. *Ownership and Control Definitions*

- In order to conduct more comprehensive background checks and to ensure that the statutory limit is met with respect to the number of licenses and individual or entity may control, the CCC has revised its regulations to define a "Person or Entity Having Direct Control over the operations of a Marijuana Establishment". To meet this definition, one or more of the following criteria must be satisfied:
 - (a) An Owner that possesses a financial interest in the form of equity of 10% or greater in a Marijuana Establishment;
 - (b) A Person or Entity that possesses a voting interest of 10% or greater in a Marijuana Establishment or a right to veto significant events;

(c) A Close Associate;

(d) A Person or Entity that has the right to control or authority, through contract or otherwise, including, but not limited to:

1. to make decisions regarding operations and strategic planning, capital allocations, acquisitions and divestments;
 2. to appoint more than 50% of the directors;
 3. to appoint or remove Corporate-level officers or their equivalent;
 4. to make major marketing, production, and financial decisions;
 5. to execute significant or exclusive contracts; or
 6. to earn 10% or more of the profits or collect more than 10% of the dividends.
- A Person or Entity having Indirect Control specifically includes a person with a controlling interest in an indirect holding or parent company of the applicant, and the chief executive officer and executive director of those companies, or any person or entity in a position indirectly to control the decision-making of a Marijuana Establishment.
 - In order to ensure compliance with the statutory limitations regarding ownership and control, Medical Marijuana Treatment Center and Marijuana Establishment applicants will need to proactively submit management contracts and similar materials as part of their CCC license application. 935 CMR 500.101(1).
 - Consequences have been strengthened for any persons or entities that violate statutory license limits through enforcement mechanisms such as licensure denial, revocation of a license, and denial of a license renewal. 935 CMR 500.360(3).

NOTE: Many municipalities have issued special permits and Host Community Agreements that are unique to a particular applicant and require modification or new permits/agreements for a change in ownership or control. The CCC's recent regulatory amendments clarify the definitions concerning what constitutes a "Person or Entity Having Direct or Indirect Control" over the operations of a Marijuana Establishment and may inform a decision of the municipality as to when a modification of a permit or agreement should be required for changes in ownership. Municipalities may want to incorporate a similar definition in their local bylaws and ordinances or Host Community Agreements for purposes of tracking ownership of such businesses.

C. Energy and Environmental Standards

- To fully implement the state's energy and environmental standards for the cannabis industry, the Commission has adopted new regulations for Waste Disposal, Air Pollution, Lighting Power Density Standards, Compliance Documentation, and Renewable Exemption. 935 CMR 500.105(12); 953 CMR 500.103(2); 953 CMR 500.120(11); 953 CMR 500.302(1)-(5); and 950 CMR 500.120(11)(e).

- The CCC has also incorporated the energy and environmental standards required under the adult-use cannabis program to the medical-use program. 935 CMR 501.120(11).

NOTE: Municipalities may want to be cognizant of the environmental standards and best practices established by the CCC in negotiating Host Community Agreements and evaluating and conditioning the operations of Marijuana Establishments through the local land use permitting processes.

The CCC's revised regulations are available online at the following links:

Medical <https://mass-cannabis-control.com/wp-content/uploads/2019/10/2019-10-Medical-Regs-FINAL-filed-with-SoS-Clean.pdf>

Adult Use <http://mass-cannabis-control.com/wp-content/uploads/2019/10/2019-10-Adult-Regs-FINAL-filed-with-SoS-Clean.pdf>

Please contact Attorney Katherine Laughman (klaughman@k-plaw.com), or any other attorney at the firm at 617-548-7622, with any questions concerning these regulatory provisions or other marijuana-related matters.

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