MASSACHUSETTS MUNICIPAL ASSOCIATION

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March 20, 2017

The Honorable Mark J. Cusack, House Chair
The Honorable Patricia D. Jehlen, Senate Chair
Joint Committee on Marijuana
State House
Boston, MA 02133

Dear Chair Cusack, Chair Jehlen, and Members of the Committee,

On behalf of the cities and towns across the Commonwealth, the Massachusetts Municipal Association wishes to offer general comments on Chapter 334 of the Acts of 2016, The Regulation and Taxation of Marijuana Act. We are submitting these comments to provide an overview on the key concerns of local government, and look forward to providing specific comments on legislative proposals when you convene those hearings in the coming weeks. The MMA thanks the Legislature for ensuring that the Commonwealth will have adequate time to plan out and establish an effective regulatory process that serves the public interest.

With the passage of Question 4, Massachusetts became one of just eight states that have legalized the recreational use of marijuana. Because of our population and our prime location in the center of a compact geographic region, our state will soon become the commercial marijuana industry's east coast base. The growing industry will certainly use Massachusetts as the retail platform for Rhode Island, Connecticut, New York, Vermont and New Hampshire.

Cities and towns have a responsibility to ensure that the new law is implemented locally in a manner that protects the public interest, including addressing public health and public safety concerns, and ensuring that the roll-out does not negatively impact residents, other businesses, neighborhoods, economic development plans, or other important considerations. As such, municipal officials are scrambling to get information and plan their own policy responses. This will be very difficult in the short term, as there are many unanswered questions and many significant flaws in the new law.

It is important to emphasize that Question 4 prevailed and the issue of whether or not to legalize the recreational use of marijuana has been settled. Yet it is also clear that the new law has several significant drafting flaws that require fixing in order to prevent negative outcomes, as well as clarification to ensure that the stated intentions of the law are met. Just as the Legislature and governor acted in 1981 to amend Proposition 2½ to make it workable, we believe it is both appropriate and necessary for state lawmakers to take action to address the shortcomings in the Regulation and Taxation of Marijuana Act. Doing so would benefit the public interest and every community.

While there are many smaller details that warrant attention, the major problems that must be addressed are: 1) The preemption and loss of local control/lack of clarity in the opt-out process; 2) the unregulated "home grow" provisions that could foster a new black market for marijuana

sales; 3) the inadequate independence of the regulatory structure; and 4) the inadequate tax revenues written into the statute.

Unwise Preemption of Local Control

One of the primary issues within Regulation and Taxation of Marijuana Act is the preemption of local control. The new law prevents cities and towns from making local decisions on whether to allow commercial retail sales in their municipalities. Here it is clear that the marijuana industry lobbyists learned a lesson from Colorado, the first state to legalize recreational use. The Colorado law allows local governing bodies to ban retail sales in their communities – and 70 percent of their cities and towns have enacted such a ban. The 2016 Marijuana Act makes it impossible for selectmen, mayors, councils or Town Meetings to make this decision. Instead, communities are only allowed to enact a ban if they place a question on the ballot and voters approve the question at their next state or local election.

The poorly-drafted opt-out ballot provisions have led to considerable confusion among cities and towns and their legal counsel. As in the example of Proposition 2½, state legislation that requires a ballot question also provides the language that is to be used on the ballot. The Marijuana Act fails to do this. As a result, we are certain that unnecessary and costly litigation will become commonplace regarding the wording of ballot question language, especially in those instances where a community votes to prohibit commercial sales, as the nationwide marijuana industry is prepared to spend significant resources to defend their marketplace. In order to clarify this section, and simplify the process, we ask the Legislature to provide statutory authority for cities and towns to opt-out of commercial sales via a simple majority vote of the local legislative body. Under Massachusetts law and our long history of municipal governance, decisions on zoning and commercial activity are inherent in the duties of Town Meetings, town councils and city councils.

The commercial marijuana law also includes language that would allow the Cannabis Control Commission (CCC) to preempt or disallow any local zoning rule, ordinance or regulation that is inconsistent with its wishes – a concern made even more serious because the "advisory board" to the CCC is actually a pro-industry panel dominated by commercial marijuana interests. We respectfully ask you to restore decision-making authority to municipal governing bodies on the question of commercial bans, and clarify that the CCC cannot override local zoning decisions and ordinances on the location and operation of locally permitted commercial facilities, including recreational marijuana. The broad preemption language must be eliminated, and local governments should have the right to enact a ban through a vote at their legislative body.

In the meantime, as the legislative process moves forward, we request passage of interim legislation to clarify that cities and towns can enact a temporary moratorium on new commercial marijuana facilities until the Cannabis Control Commission has promulgated its regulations governing the industry. Because the deadline for regulations comes after the CCC is instructed to begin processing applications and licenses for commercial facilities, local governments will begin to see applications for commercial facilities *before* they know the full extent of the state regulations under which those facilities will be operating. Communities need adequate time to finalize their local ordinances and zoning rules, and it does not make sense to force communities to act on their local provisions before the state's regulatory framework is in place. Thus, a temporary moratorium should last through the state's decision-making process.

An Unregulated Non-Commercial Market

As of December 15, 2016, the home cultivation of marijuana is lawful through a totally unregulated "home grow" provision, which authorizes the cultivation of up to six plants per person, and twelve per household, at any one time. Calculating the street value, that's $60,000 worth of marijuana, and based on reasonable processing estimates, the twelve plants could yield approximately 12,000 joints, or thousands of "servings" of marijuana-infused edibles.

Local and state law enforcement officials are gravely concerned regarding the home grow language in the new law – the sheer volume of home-grown marijuana will clearly incentivize a burgeoning black market that will hit the street at least a year before official, regulated commercial sales become lawful, creating a source of sales that could easily reach school-aged children and teenagers.

We respectfully ask you to reduce the number of plants allowed by the home-grow provisions, and to develop a structure to appropriately register, regulate and monitor this activity to safeguard public safety and health, and protect neighborhoods, residents and youth.

An Independent Advisory Board is Necessary

We urge you to improve the composition of the Cannabis Advisory Board to make it a truly independent entity, instead of the industry-dominated panel that it is. It is striking that the ballot question was written to give commercial marijuana interests majority control of a board that will be so heavily involved in regulating the industry. We respectfully ask that a municipal representative be added to the board, as well as a representative from municipal police chiefs and a seat representing local boards of health. We believe the addition of these perspectives is vital to ensure that local public safety and health concerns are considered when crafting the regulations.

In addition, we believe that the number of commissioners on the Cannabis Control Commission is insufficient to successfully pursue their mission. We believe that the CCC should be expanded to five members, with one additional commissioner to be appointed by the Governor and one additional commissioner to be appointed by the Attorney General. Ideally, the Governor's appointment would represent municipal interests, and the Attorney General's appointment would represent public safety interests. We note that the Massachusetts Gaming Commission has members appointed by multiple constitutional officers as well.

Inadequate Revenues

Another major concern is the rock-bottom excise revenue that would be generated by the ballot question, where it is again clear that the marijuana industry learned a lesson from earlier experiences in Colorado and Washington state. In addition to state sales taxes, the Colorado law imposes a 25 percent tax on marijuana, and Coloradan cities and towns can enact their own local sales taxes of up to 8 percent. The state of Washington imposes a 37 percent excise tax, and cities and towns can collect their own local sales tax on top of that.

Here in Massachusetts, the commercial interests behind Question 4 set the state marijuana excise tax at just 3.75 percent, and capped the municipal local-option marijuana excise tax at only 2 percent. These would be the lowest rates in the nation.

Given the significant new burden of regulating and monitoring a new commercial industry (which will deal in a controlled substance that is still illegal under federal law), the state and local revenue rates are unreasonably low and damaging to public budgets. The state excise will clearly fall short, and we urge you to increase the state tax so that, at a minimum, resources will be available to provide statewide training of police officers and fund the CCC and other state agency needs. Further, cities and towns will have new responsibilities in areas of public safety, public health, zoning, permitting and licensing. At 2 percent, the local revenue in the Marijuana Act will fall far short of local needs.

We respectfully ask you to increase the allowable state and local tax rates to bring them in line with Colorado and Washington and other "first-wave" legalization states. We recommend that cities and towns be authorized to implement, on a local-option basis, an excise of between 2 to 6 percent, to be determined by vote of the local governing body.

Summary

Cities and towns have a responsibility to implement the new law in a manner that protects the public interest, yet communities will not be able to fulfill this responsibility unless the significant flaws detailed in this letter are addressed. Just as the Legislature and governor acted in 1981 to amend Proposition 2½ to make it workable, we respectfully ask the Commonwealth to take action to address the shortcomings in the Marijuana Act. Doing so would benefit the public interest and every community.

Thank you very much for your consideration. If you have any questions or wish to receive additional information, please do not hesitate to have your offices contact me or MMA Legislative Director John Robertson at (617) 426-7272 at any time.

Sincerely,

Geoffrey C. Beckwith
Executive Director & CEO