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MMA letter to governor and legislative leaders calls for changes to recreational marijuana law ⁽¹⁾

November 30, 2016

His Excellency Charles D. Baker
Governor of the Commonwealth
State House, Boston

The Hon. Robert A. DeLeo
Speaker of the House
State House, Boston

The Hon. Stanley C. Rosenberg
Senate President
State House, Boston

Dear Governor Baker, Speaker DeLeo, and President Rosenberg,

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 recognize that Question 4 prevailed and the issue of whether 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. 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 Question 4. 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 fixed are: 1) deadlines that are too short to give state and local officials enough time to prepare for and administer the law; 2) the preemption and loss of local control; 3) the unregulated "home grow" provisions that could foster a new black market for marijuana sales; and 4) the inadequate tax revenues written into the statute.

An Unrealistic Timeline

Question 4 sets an unrealistic deadline, instructing the state to construct the entire regulatory framework for the commercial marijuana industry by January 1, 2018. That is too little time to recruit and appoint a first-ever, three-person Cannabis Control Commission (CCC) and give the rookie commissioners the time to build a brand-new state agency, recruit and hire agency staff, draft initial versions of all regulations, solicit input from all stakeholders, promulgate final regulations, and provide enough lead-time for a rational roll-out that protects the public interest. If the state fails to meet the January 1 deadline, the industry has written Question 4 in such a way that the commercial industry would arise in a mostly unregulated environment, because medical marijuana operators would *automatically* be licensed as commercial agents for recreational marijuana, giving them a near-monopoly in the marketplace.

We respectfully ask you to act swiftly to extend these deadlines and give the state and municipalities more time to get the regulatory framework in place and adopt reasonable rules to govern this new commercial industry.

In the meantime, we request passage of statutory authority to allow cities and towns to enact a moratorium on new commercial marijuana facilities until the Cannabis Control Commission has promulgated 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 regulations under which those facilities will be operating.

Unwise Preemption of Local Control

A second major concern 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. Question 4 makes it impossible for selectmen, mayors, councils or town meetings to make this decision. Instead, communities are only allowed to enact a ban if 10 percent of local residents who voted in the last state election sign a petition to place a question on the ballot, and voters approve the question at a *state* general election in 2018 or later. This means the earliest that communities can even consider a ban will be nearly a year *after* commercial sales become legal – it is hard to imagine that this industry-friendly loophole was unintentional.

Further, Question 4 includes language that would allow the CCC to preempt or disallow

any local zoning rule, ordinance or regulation that is inconsistent with their wishes – a concern made even more serious because the “advisory board” in the law is actually a pro-industry panel dominated by commercial marijuana interests.

We respectfully ask you to act swiftly 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.

An Unregulated Non-Commercial Market

Starting on December 15, the home cultivation of marijuana will be allowed through a totally unregulated “home grow” provision, which will allow individuals to cultivate up to 12 plants at any one time. Calculating the street value, that’s \$60,000 worth of marijuana, and based on reasonable processing estimates, the 12 plants could yield approximately 12,000 joints, or thousands of “servings” of marijuana-infused edibles.

Local and state law enforcement officials are gravely concerned about the home grow language in the new law. The sheer volume of home grown marijuana will certainly 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 delay the home grow provisions, and develop a structure to appropriately regulate and monitor this activity to safeguard public safety and health, and protect neighborhoods, residents and youth.

Inadequate Revenues

Another major concern is the rock-bottom excise revenue that would be generated by Question 4, 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 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 of up to 3.4 percent.

Here in Massachusetts, the commercial interests behind Question 4 set the state marijuana excise tax at just 3.75 percent, and capped the 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 Question 4 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.

An Independent Advisory Board is Necessary

We urge you to improve the makeup of the Cannabis Advisory Board to make it a truly independent entity, instead of the industry-dominated panel that it is under Question 4. It is striking that the ballot question was written to give commercial marijuana interests 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.

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 Question 4. 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
MMA Executive Director & CEO

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