



Franklin Regional Council of Governments

Recreational Marijuana Municipal Roles and Responsibilities Workshop Notes

Please be advised that these workshops notes are based on current information but the field of Recreational Marijuana is evolving rapidly and Towns should consult with their Legal Counsel

Speaker: Margaret Hurley, Municipal Law Division Chief, Mass AGO @ FRCOG 9/7/17

Current Status: The Cannabis Control Commission (CCC) and Cannabis Advisory Board (CAB) have been appointed. CCC is meeting in September 2017 to begin the development of the regulations. Some favorable outcomes of the legislation include funds being set aside for public health and a charge to the CCC to study how to increase involvement of local agriculture.

Next steps:

- By March 15, 2018 the CCC should publish regulations. If not done by July 1, 2018, then existing medical marijuana establishments can start selling recreational marijuana on July 2, 2018.
- On April 1, 2018 license applications can be submitted. When a license application is filed with the CCC, they notify the community. It is up to the community to communicate to the CCC about any local ordinances or zoning bylaws or regulations that would make the Applicant noncompliant if the license were issued.
- CCC will rank the applications under statutory criteria.
- Bylaws that would impact the placement of a facility in a town would ideally need to be in place by April 1, 2018 when the CCC licensing process begins, including approval by Attorney General's (AG) office (which can take up to 90 days). However, this will be difficult to do since the regulations are not expected to be published until March 2018. Therefore, many towns have considered adopting a temporary moratorium via a zoning amendment as soon as possible. This will provide additional time to get zoning amendments in place before applications are considered. Bylaws adopted after April 1, 2018 would still apply to any applications submitted to the CCC after the date of the zoning bylaw adoption.
- Licensing by the CCC can start as early as June 1, 2018.
- Your town should know if a business is applying, because the Applicant will need a host agreement with your community.
- The prior Medical Marijuana law was repealed with statutory requirements now under the authority of the CCC.
- Compromise legislation has a grandfathering provision. If your town already took votes based on the State law passed in November, whatever the town passed before July 1, 2017 should be valid.
- Taxes – the local tax rate for recreational marijuana has been increased to 3% of the total sales price. A Town Meeting Vote is required to adopt a local sales tax.
- The AG's office will consider moratoria that go into 2019, but the AG's office has not yet approved any beyond December 2018.
- AG's office recommends that, if your moratorium expires before the AG approves the bylaw, you can call a Special Town Meeting and extend the moratorium for a few months to cover the review period.

Planning process issues:

- Definition of commercial marijuana is very broad and AG's office has approved zoning bylaws limiting or prohibiting this type of land use. A town can also adopt a general bylaw which may provide additional protection from zoning freezes and requires only a simple majority vote.
- Bylaws that limit the # of establishments below the threshold (fewer than 20 percent of the number of alcohol licenses issued within the town), and bylaws that completely ban retail establishments, need to get both Town Meeting approval of a by-law (or City Council approval of an ordinance) and approval of a majority of voters on a ballot vote at an annual or special election if the town/city voted in favor of commercial marijuana at the state wide ballot in November of 2016. Towns/cities that voted against commercial marijuana need only get Town Meeting or City Council approval of the by-law/ordinance.
- The Ballot vote and zoning bylaw amendment language MUST be the same. In other words there should be no amendments at Town Meeting to the language of the zoning amendment! The statute is not clear on the order of the two votes. The ban or limit would not have lawful effect until the town gets both Town Meeting approval and ballot approval. The AG's office must also approve the zoning bylaw amendment.
- With respect to advertising, communities can regulate signage at a facility but should seek guidance from Town Counsel on what is acceptable since case law is evolving.
- With respect to food inspections: With medical marijuana, edibles were not considered to be food. Seed to Stem tracking will be regulated by the CCC and tested by an independent lab. Local BOHs may be able to regulate and inspect but this should become clearer when CCC regulations are issued.

Other important municipal concerns:

- Public Consumption is not legal. Towns have the ability to regulate or prohibit smoking (including marijuana) in public and on public lands. You may not need to amend existing smoking regulations depending upon the text if the regulations are broad enough to include marijuana.
- An open containers of marijuana in a vehicle is unlawful, similar to open container law for alcohol.
- Agriculture – language was added in December to establish that “agricultural uses” does not include growing, distribution, etc. of marijuana. Compromise bill added “but a town can adopt a bylaw to allow for commercial growing on land zoned for agriculture.”
- Question: If a town gave a letter of support for the medical facilities, could they rescind the letter?
Answer: Another process will now be in place. Medical Marijuana facilities will need a host community agreement.
- A private landowner can prohibit possession and use on their property.
- Towns and State can prohibit possession and use on their property.
- All employers: Check your employment policies. Clarify medical and recreational marijuana standards.
- If anyone is selling recreational marijuana now, the community can contact the local District Attorney or the Attorney General's Office.
- The AGO's Consumer Protection Division will be looking at issues of advertising, labeling and other consumer protection related issues.
- In order to permit marijuana cafes, all communities regardless of how they voted on the state wide ballot question in November of 2016 will need to do a ballot vote at a biennial state election, the next of which will be held in November 2018.

Additional items that may be addressed in the CCC regulations:

- The CCC regulations may clarify whether the host agreement has to be in place before an application is submitted.
- Not clear from statute whether towns or BOHs can license. The CCC regulations may address.
- If a town votes to ban commercial sales, will it affect existing medical marijuana facilities?
- What if a town has issued a special permit for a medical marijuana facility and on July 2, 2018 medical marijuana facilities are allowed by state statute to begin selling recreational marijuana (due to the failure of the CCC to issue final regulations)? Will the state statutory provisions pre-empt the local permitting process?
- What if towns want to know where the CCC is headed, so they know if they want to be more or less restrictive with their town regulations? Answer: there will be a Public Hearing process for the regulations.
- Can commercial home delivery be regulated locally? CCC regulations may address.

Helpful Links as of 9/7/17:

MA Courts: <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/marijuana.html>

Attorney General's Muni Law Division: <http://www.mlu.ago.state.ma.us/>

MA Regional Planning Agencies Resource Page: www.Massmarpa.org/recreational-marijuana