

AN ACT TO ENSURE SAFE ACCESS TO MARIJUANA

Nantucket

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AN ACT TO ENSURE SAFE ACCESS TO MARIJUANA

- On November 8, 2016, Massachusetts voters approved Question 4 legalizing the recreational use of marijuana and marijuana establishments (Chapter 334 of the Acts of 2016).
- On July 28, 2017, Governor Baker signed the General Court's revised law on the subject, "An Act to Ensure Safe Access to Marijuana" (the "Act"), adopted as Chapter 55 of the Acts of 2017.



AN ACT TO ENSURE SAFE ACCESS TO MARIJUANA

Non-medical "Marijuana establishment" is broadly defined in G.L. c.94G, s.1 as “a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.”



THE CANNABIS CONTROL COMMISSION

- The Act establishes a Cannabis Control Commission (“CCC”) (similar to the Alcoholic Beverage Control Commission) which will have authority over the following:
 - Adoption of regulations and issuance of licenses for commercial production and sale of marijuana;
 - Adoption of procedures for the issuance, transfer and renewal of licenses to operate recreational marijuana establishments;
 - Licensing of medical marijuana treatment centers, control over which will be transferred from the Department of Public Health before December 31, 2018.

CURRENT TIMELINE

August 1, 2017
– Cannabis
Advisory Board
(Already in
place)

- Appointment of a 25-member Cannabis Advisory Board, with members appointed by a variety of officials and organizations, charged with making recommendations on guidelines, rules and regulations for the recreational use of marijuana.

September 1,
2017 – Cannabis
Control
Commission
(Already in
place)

- Appointment of a five-member Cannabis Control Commission (“CCC”), by the Governor, Attorney General and Treasurer.

CURRENT TIMELINE

- | | |
|---|--|
| March 15, 2018 – CCC Adoption of Regulations | <ul style="list-style-type: none">• Adoption of regulations, guidelines and protocols by the CCC for the issuance of licenses for recreational marijuana establishments.• <i>NOTE: adoption of special regulations for the counties of Dukes and Nantucket by May 1, 2018.</i> |
| April 1, 2018 – Acceptance of License Applications Begins | <ul style="list-style-type: none">• Acceptance of applications by the CCC for recreational marijuana licenses not later than April 1, 2018.• <u>IMPORTANT:</u> The CCC will be governed by the zoning bylaws or ordinances <u>in effect at the time of application.</u> |
| June 1, 2018 – License Issuance | <ul style="list-style-type: none">• The CCC may begin issuing licenses, prioritizing applications under statutory criteria. The CCC must approve or deny applications within 90 days. |

LOCAL CONTROL – TIME, PLACE AND MANNER REGULATIONS

Ordinances and Bylaws Regulating Time, Place and Manner

- Municipalities may regulate the “time, place and manner” of marijuana establishment operations and may adopt ordinances and bylaws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not “unreasonably impracticable.”
- Ordinances and bylaws may also
 - restrict licensed cultivation, processing and manufacturing of marijuana that is a “public nuisance,”
 - establish restrictions on public signs related to marijuana establishments, and
 - establish a civil penalty for violation of an ordinance or bylaw.
- Standard practices for adoption of bylaws will apply.

LOCAL CONTROL – PROHIBITIONS AND LIMITATIONS

Ordinances or Bylaws - Imposing Prohibitions or Limitations

- A municipality may prohibit or limit recreational marijuana establishments by bylaw or ordinance with respect to the following:
 - (i) prohibit the operation of one or more types of marijuana establishments;
 - (ii) limit the number of marijuana retailers to fewer than 20 percent of the number of retail off-premises alcoholic beverage licenses issued under G.L. c.138 by the municipality; or
 - (iii) limit the number of any type of marijuana establishment to fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the municipality.

LOCAL CONTROL – PROHIBITIONS AND LIMITATIONS

The following procedure applies for adopting a bylaw to prohibit or limit the number of recreational marijuana establishments:

- If a municipality **voted in favor** of Question 4 on November 8, 2016 [i.e., a majority of voters casting ballots voted “yes” on the question], **then two votes must be taken** before an ordinance or bylaw can be effective:
 - (1) it must be approved by the voters by ballot at an annual or special election, **and**
 - (2) the ordinance or bylaw must be approved by the local legislative body (Town Meeting).

LOCAL CONTROL – PROHIBITION AND LIMITATIONS

Zoning v. General Legislation

- The language in the Act is ambiguous with respect to whether a bylaw or ordinance implementing a prohibition or limitation must be zoning or general in nature.
- We recommend that a municipality consider adopting both a general and a zoning bylaw or ordinance to prohibit or limit recreational marijuana establishments.
- This is an evolving issue that will involve different policy considerations.

LOCAL CONTROL – CONVERSION OF EXISTING MEDICAL MARIJUANA TREATMENT CENTERS

Conversion of Existing Medical Marijuana Treatment Centers

- The Act includes a requirement prohibiting a zoning bylaw or ordinance from preventing a medical marijuana establishment, licensed by the Commonwealth on or before July 1, 2017, from converting to a recreational marijuana establishment “engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment engaged in the same type of activity.”
- Such a conversion may be prohibited if the municipality has adopted a total prohibition of all recreational marijuana establishments by ordinance or bylaw.

LOCAL CONTROL – HOST COMMUNITY AGREEMENTS

Host Community Agreements

- The Act requires that both recreational marijuana establishments and medical marijuana treatment centers enter into a HCA with host communities and allows for a “community impact fee”.
- The community impact fee must be “reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center and shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years.”
- The Act does not preclude renegotiation of a HCA at the end of the initial five year term.
- The municipality is required to document its costs.

LOCAL CONTROL – ZONING MORATORIA

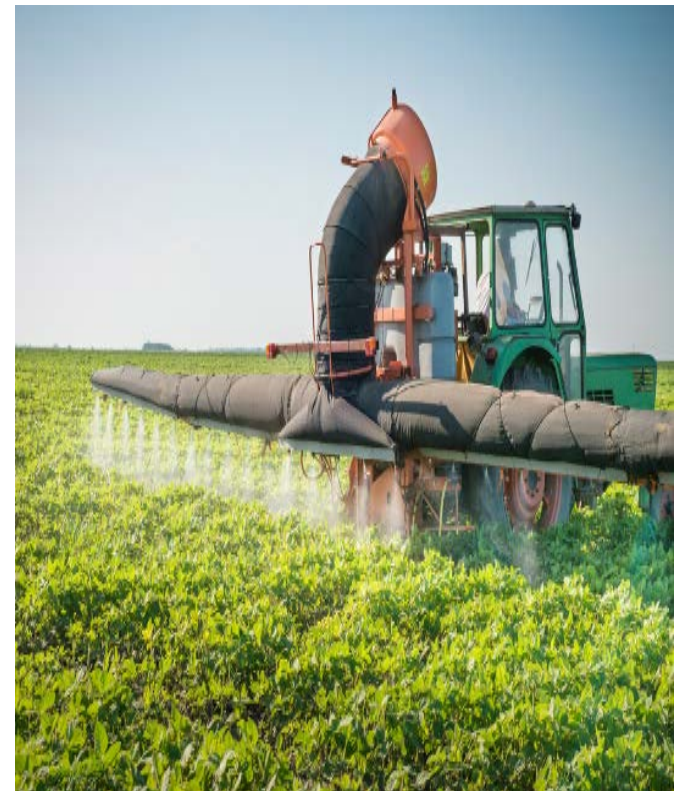
Zoning Moratoria

- The Attorney General has approved moratoria in many municipalities through December 31, 2018.
- Over one-third of municipalities have already adopted a moratorium, ban or limitation on marijuana establishments, thereby limiting the number of availability communities which are available for marijuana establishments to seek a license. There is a potential risk of an industry-mounted challenge to an adopted moratorium as an prohibited ban under the Act.
- We recommend that municipalities have a bylaw or ordinance in place before April 1, 2018 in order to avoid a potential challenge to a zoning moratorium and the costs of litigation.

LOCAL CONTROL – AGRICULTURAL USE EXEMPTION

Marijuana Related Uses Not “Agriculture”

- Chapter 351 of the Acts of 2016 included an amendment to the Zoning Act, G.L. c.40A, §3 which states that the “growing, cultivation, distribution or dispensation of marijuana” does not qualify for the agricultural exemption under the Zoning Act.
- The Act now expressly adds, however, that municipalities are not precluded “from establishing zoning bylaws or ordinances which allow commercial marijuana growing and cultivation on land used for commercial agriculture, aquaculture, floriculture, or horticulture.”



LOCAL TAX OPTION



- The Act created a new Chapter 64N of the General Laws setting tax rates for the sale of recreational marijuana products.
- Section 3 allows cities and towns to impose a local sales tax on the “sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the city or town” up to 3% of the total sales price, an increase from the previous 2%.
- ***If a municipality has already accepted §3, a new vote of the legislative body will be required in order to increase a sales tax rate between 2% - 3%.***

PERSONAL USE OF NON-MEDICAL MARIJUANA

- **The following personal use of recreational marijuana is permitted under the Act:**
 - Persons 21 years of age or older may possess 2 ounces or less of marijuana.
 - Within a person’s “primary residence,” a person may possess up to 10 ounces of marijuana and any marijuana produced on the premises for personal use by not more than 6 marijuana plants.
 - If there is more than one grower at the residence, there may be up to 12 plants cultivated on the premises.
 - A person may give away or transfer without “remuneration” to a persons 21 years or older up to 1 ounce of marijuana, of which no more than 5 grams may be in the form of marijuana concentrate, provided that such transfer is not advertised or promoted to the “public.”
 - Persons 21 years of age or older may also possess or manufacture marijuana accessories or sell such accessories to a person 21 years of age or older

PERSONAL USE OF NON-MEDICAL MARIJUANA

The following are significant limitations imposed on personal use of recreational marijuana under the Act:

- Cultivation and processing marijuana plants may not be visible from a public place.
- Marijuana or marijuana products exceeding 1 ounce within the person's place of residence must be secured by a lock.
- No person shall consume marijuana in a public place or smoke marijuana where smoking tobacco is prohibited.
- Open containers of marijuana or marijuana products are prohibited in the passenger area of any motor vehicle.



QUESTIONS?



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