

**Municipal Client Alert**  
**August 2017**

**THE LEGISLATURE COMPROMISES ON THE HIGH:  
UPDATE ON THE REGULATION AND CONTROL OF MARIJUANA  
ESTABLISHMENTS (NON-MEDICAL) BY CITIES AND TOWNS IN  
MASSACHUSETTS**

On July 28, 2017 Governor Baker signed into law House Bill No. 3818, “an Act to ensure safe access to medical and “adult-use” of marijuana in the Commonwealth” (the “Act”). While the main focus of the Act is on marijuana establishments (non-medical marijuana), this compromise bill also touched on several issues that involve medical marijuana dispensaries. The Act was designed to provide finality to the process by which cities and towns can control and regulate marijuana establishments within their borders. This process had previously been codified in Chapter 94G of the General Laws.

**I. Local Prohibitions.** The Act amends section 3(a)(2) of Chapter 94G so that the process for cities and towns to prohibit the number or type of marijuana establishments has been changed. The new process differentiates between cities and towns based on how the voters in those cities and towns voted on Question 4 on the 2016 state election ballot.

**A. In Cities and towns where a Majority of the voters voted in the Affirmative on Question 4, and for all cities and towns after December 31, 2019,** the city or town must submit its general by-law or ordinance for approval of the voters pursuant to a procedure set forth in what will be a new section 3(e) of Chapter 94G, before adopting the by-law or ordinance, if it would:

- i. Prohibit the operation of 1 or more types of marijuana establishments within the city or town;
- ii. Limit the number of marijuana retailers to fewer than 20 percent of the number of licenses issued with the city or town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under Chapter 138 of the General laws; or
- iii. Limit the number of type of marijuana establishments to fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the city or town.

**B. The new procedure, set forth in the new section 3(e) of Chapter 94G, for submitting a by-law or ordinance for approval by the voters is as follows:**

- i. The city solicitor or town counsel shall prepare a fair and concise summary of the proposed by-law or ordinance which will make clear the number and types of marijuana establishments which will be permitted to operate under the proposed by-law or ordinance and shall be included on the ballot.



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- ii. A ballot shall be prepared asking “Shall this [city or town] adopt the following [by-law or ordinance]? [solicitor/counsel summary] [full text of by-law or ordinance]
- iii. If the majority votes in favor of the question, the city or town may adopt the by-law or ordinance, but if the majority votes against, the city or town shall not adopt the by-law or ordinance.

C. A ballot question under this new Section 3(e) of Chapter 94G may be placed on the ballot at a regular or special election held by the city or town by a vote of the board of selectmen or city or town council, with the approval of the mayor, and subject to a municipal charter, if applicable.

D. In Cities and Towns where a Majority of the voters voted in the Negative on Question 4, so long as it is accomplished before December 31, 2019, there does not appear to be any restriction (other than not relying on zoning) on the ability of those cities and towns wishing to limit the number or type of non-medical marijuana establishments within those cities and towns under section 3(a)(2) of Chapter 94G via enactment of general by-law or ordinance, without going to the voter.

**II. Zoning.** The Act amends section 3(a)(1) of Chapter 94G so that:

- A. Cities and towns **may not use zoning** to prevent the conversion of a medical marijuana establishment (whether it cultivates, sells, or manufacturers medical marijuana or medical marijuana products) licensed before July 1, 2017, into a non-medical marijuana establishment.
- B. The Act now also **explicitly prohibits** cities and towns from using zoning to limit the number of marijuana establishments below the limits established under section 3(a)(2) of Chapter 94G.

**III. Host Community Agreements.** Section 3(d) of Chapter 94G is replaced entirely with new language, which:

- A. Combines limitations on the scope of host community agreements for marijuana establishments with new limitations on the scope of host community agreements for medical marijuana dispensaries.
- B. Requires that a host community agreement be executed for any marijuana establishment or medical marijuana dispensaries, and, requires the host community agreement to include a

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stipulation of responsibilities between the host community and the marijuana establishment or the medical marijuana dispensary.

- C. Establishes new limitations on Host Community Agreements:
- i. The community impact fee may not be greater than 3 percent of the gross sales of the establishment.
  - ii. The Host Community Agreement cannot be effective for longer than 5 years.
  - iii. Any community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the establishment.

**IV. Still to Come on Local Control.**

- A. Appointments **to the Cannabis Control Commission**, which has responsibility for non-medical marijuana (and as of December 31, 2018, will have responsibility for medical marijuana), are still to be made by September 1, 2017.
- B. **Initial regulations** for marijuana establishments to be promulgated by the Cannabis Control Commission by March 15, 2018.
- C. **First applications** for marijuana establishment licenses received on April 1, 2018. **Initial licenses** for marijuana establishments to be issued July 1, 2018.

*This Client Alert was prepared by Karis L. North. For questions about these issues, please contact Attorney North or the attorney assigned to your account at (617) 479-5000.*

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