

Municipal Client Alert
January 2018

**THE CANNABIS CONTROL COMMISSION SPEAKS - REGULATING THE HIGH:
SELECT PROVISIONS OF THE DRAFT REGULATIONS FOR ADULT USE OF
MARIJUANA IMPACTING CITIES AND TOWNS IN MASSACHUSETTS**

The Cannabis Control Commission (“Commission”) has issued detailed draft regulations on the Adult Use of Marijuana. 935 CMR 500.000 was created to implement St. 2016, c. 334, *the Regulation and Taxation of Marijuana Act*, as amended by St. 2017, c. 55, *An Act to Ensure Safe Access to Marijuana*.

In more than 100 pages, the draft regulations create the required application, licensing and administrative appeals process for Marijuana Establishments, set forth operational and security requirements, establish an inspection and compliance regime, testing requirements of marijuana and marijuana products, and set out a “suitability standard” for licensure and registration. The following key elements of the draft regulations impact municipalities and local regulation of Marijuana Establishments:

I. Compliance with Municipal Requirements. The draft regulations require a Marijuana Establishment (defined as a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer, or any other type of licensed marijuana-related business), to comply with all local rules, regulations, ordinances, and bylaws. The draft regulations also state that the regulations “shall not be construed to prohibit lawful local oversight and regulation, including fee requirements, that does not conflict or interfere with the operation” of the regulations. 935 CMR 500.170.¹

II. Municipal Input into the Licensing Process. The draft regulations establish a three part application “packet” process for Marijuana Establishments for both new applicants and existing RMD (registered marijuana dispensary) applicants which requires the following: (i) an Application of Intent packet; (ii) a Background Check packet; and (iii) a Management and Operations Profile packet. 935 CMR 500.101(A) and (B).

As part of the Application for Intent packet, applicants must provide the following:

- A. Documentation signed by the contracting authorities for the municipality and applicant that the applicant and the host community in which the Marijuana Establishment is located have executed a host community agreement;
- B. Documentation that the applicant has conducted a community outreach hearing within six months prior to the application. Documentation must include:

¹ Section references are provided only as aids in reviewing the draft regulations. Because these are draft documents, sections could be changed, renumbered, or eliminated when promulgated in final form.

Municipal Client Alert
January 2018

1. Notice of the hearing with the proposed address of the Marijuana Establishment, and which provides at least 7 calendar days notice of the hearing;
 2. A copy of the hearing notice filed with the Town or City clerk, the planning board, the contracting authority for the municipality, and the local licensing authority for adult use of marijuana, if applicable;
 3. Attestation that the hearing notice was mailed to abutters of the proposed address, owners of land directly opposite any public or private street or way, and abutters to abutters within 300 feet of the property line, even if in another city or town; and,
 4. Information presented at the community outreach hearing.
- C. Documentation that the Marijuana Establishment is in compliance with all local zoning ordinances and bylaws, which shall include a certification from the municipality in which the Marijuana Establishment will be located.
1. As part of the Commission's review of the application, it will request that a municipality respond within 60 days to correspondence from the Commission seeking confirmation that the applicant's proposed Marijuana Establishment complies with local bylaws or ordinances and is not within 500 feet of a pre-existing public or private school providing education in kindergarten or grades 1 through 12.
 2. The Commission shall consider certification submitted by the applicant to be sufficient evidence of compliance with municipal bylaws or ordinances unless it receives a response in writing from the municipality within 60 days stating that the applicant is not in compliance with local law.

III. Timing. The Commission shall grant or deny a provisional license not later than 90 days following notification to the applicant that all three required packets are considered complete. 935 CMR 500.102(B)(3).

IV. Establishment of Buffer Zone. Among other security requirements for Marijuana Establishments, compliance is required with local siting requirements. However, if no local requirements exist, a Marijuana Establishment "shall not be sited within a radius of 500 feet of a public or private school, daycare center, or any other facility in which children commonly congregate." The 500-foot distance under this section shall be measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed Marijuana Establishment. 935 CMR 500.110(C).

V. Application of the Draft Regulations to Registered Marijuana Dispensaries (RMDs). Existing RMDs may apply to operate an Adult Use Marijuana Establishment, and will receive priority review, if, according to the records of the certifying agency, the applicant: (i) is a

Municipal Client Alert
January 2018

registered marijuana dispensary that has received a Final Certificate of Registration and is selling marijuana or marijuana-infused products as of the date of application; (ii) is a registered marijuana dispensary that has received a Final Certificate of Registration but is not selling marijuana or marijuana-infused products as of the date of application; or (iii) is a registered marijuana dispensary that has received a Provisional Certificate of Registration but not a Final Certificate of Registration. 935 CMR 500.101(B)(1).

VI. Still More Highs to Come.

- A. The Commission will be holding 10 public hearings on the draft regulations across the Commonwealth, **beginning February 5, 2018, and concluding on February 13, 2018.** A list of locations is available at the Commission's website, <https://www.mass.gov/news/cannabis-control-commission-notice-of-public-hearing>
- B. **Public comment and testimony on the draft regulations will be accepted until 5:00 PM on February 15, 2018.** Final regulations must be promulgated by **March 15, 2018.**
- C. First applications for Marijuana Establishment licenses will begin to be received on **April 1, 2018.** Initial licenses for Marijuana Establishments are to be issued by **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.

For a discussion of these and other issues, please visit the update on our website at www.mhtl.com. To receive legal updates via email, contact information@mhtl.com.

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