



MEDICAL AND ADULT- USE OF CANNABIS IN MASSACHUSETTS

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ASSOCIATION

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- This information is provided for legal education purposes only. It is not intended to constitute legal advice. Please consult your city solicitor or town counsel for legal advice relative to legal questions regarding marijuana.

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PART ONE

BRIEF HISTORY OF STATE LAW IN
MASSACHUSETTS



EDITORIAL DIRECTOR OF MARIJUANA BUSINESS DAILY STATED THE FOLLOWING AT THE ANNUAL “TOTAL NICOTINE CONFERENCE (SPONSORED BY THE CONVENIENCE STORE NEWS AND PETROLEUM)

- “This is a professional industry now ...”
- 2016 election – “This will move quickly.” “ ... More than 50% of Americans support recreational marijuana.”
- “At some point, legislatures will have to address that.”
- Industry will generate \$14 billion to \$17 billion in 2016, according to Walsh.
- “Baby boomers are huge for this industry.”
- “Absolutely, Big Tobacco is looking at this.”
- They know how to cultivate crops, they know how to market adult products, they know how to distribute.



DPH'S MEDICAL MARIJUANA PROGRAM

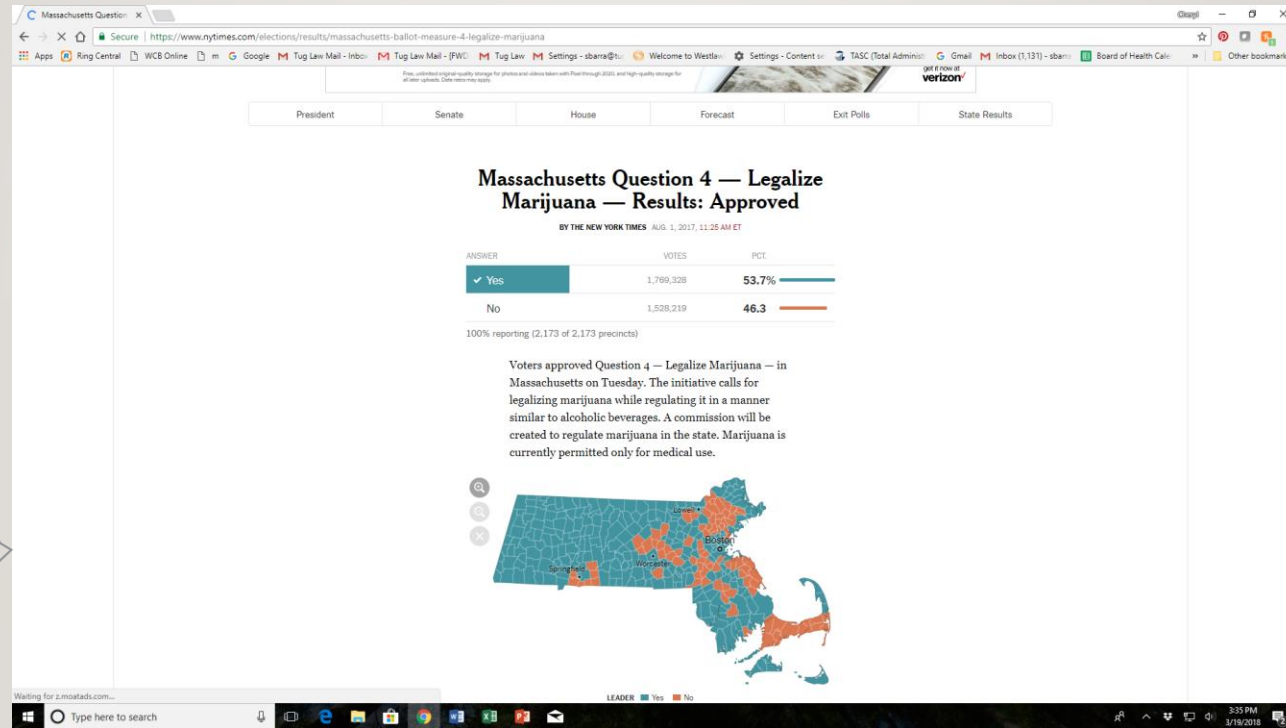
- Ballot Initiative 2012 – 63% to 37% - only 2 out of 351 municipalities voted no.
- Program housed and regulated by DPH.
- Edibles not considered “food” for purposes of the Food Code.
 - Locals need not enforce, unless they want to.
- Local permitting and regulation allowed (no preemption).
- Non-refundable application fee of \$30,000.
- Annual registration fee of \$50,000 – supports funding for DPH program.



RESULTS OF NOVEMBER 2016 BALLOT QUESTION YES – 260 NO - 91

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“AN ACT TO ENSURE SAFE ACCESS TO MARIJUANA”

EFFECTIVE DATE: JULY 28, 2017

CHAPTER 94G

- Housed at the Office of the Treasury
 - Both medical and adult-use
- Created Cannabis Control Commission
 - Steven Hoffman, Chair: retired Bain and Company executive
 - Kay Doyle, J.D., former DPH attorney for the Medical Marijuana Program
 - Jennifer Flanagan, former Senator for 4th Worcester District
 - Shaleen Title, J.D., co-founder of THC Staffing, co-author of ballot question
 - Britte McBride, former assistant attorney general

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FUNDING MECHANISM

- 20 % tax on product.
 - 10.75% excise tax on retail marijuana sales.
 - 6.25% sales tax.
 - 3% local sales tax if desired by municipality.
- 3% Community impact fee



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COMMUNITY HOST AGREEMENT CONTROVERSY

- Commission won't consider application until host agreement is in place.
- Allegations that municipalities are extracting more than the 3% of sales tax (community impact fee).
 - “voluntary donations”
 - Encourages “big” marijuana.
 - Discourages small cultivators and minority businesses.
- Commission voted 4 – 1 to not to review the agreements.
 - Law unclear and they don't have the authority to review these agreements.
- Lawsuit threatened.

RESPONSIBILITIES OF CCC

- Promulgate regulations prior to licensing.
- Supervise industry.
- Implement state licensing system.
- Issue licenses to operate.
- Investigate and enforce violations.



PART TWO

CONUNDRUMS



“MARIJUANA ACCESSORIES” AS DEFINED BY THE LAW

- “equipment, products, devices or materials of any kind that are intended or designed for use in ... ingesting, inhaling or otherwise introducing marijuana into the human body.”



CONUNDRUM #1

- Chapter 94C, §1: “drug paraphernalia”
 - Includes but is not limited to “water pipes ... roach clips ... electric pipes ... air-driven pipes ... bongos ...”
 - Only permitted if retailer had a tobacco sales permit.
- Now called “marijuana accessories.”
 - Not illegal.
 - Head shops are perfectly legal businesses.
 - No need for tobacco sales permit.



CONUNDRUM #2

VAPE SHOPS

ADULT-ONLY RETAIL
TOBACCO STORES



FRAMINGHAM CONUNDRUM

- Local tobacco regulation has a cap on the # of adult-only retail tobacco stores.
 - Include vape shops.
- Vape shops sell “marijuana accessories” since they are also “vaping devices.”
- Local regulation that limits the sale of “marijuana accessories” to adult-only retail tobacco stores and marijuana establishments in a city/town that is at its maximum number of retail tobacco stores **effectively restricts the sale to existing vape shops and future marijuana establishments.**
 - Difficult politically.

RESTRICTIONS ON PUBLIC CONSUMPTION OF MARIJUANA – CONUNDRUM #3

- Chapter 94G, Section 13: “No person shall consume marijuana in a **public place** or smoke marijuana where smoking is prohibited.”
 - Exemption: social consumption establishments.
 - Municipality must vote at a biennial state election in order to permit social consumption establishments. (c. 94G §3).
 - Delayed until February 2019 at the earliest.
 - Includes smoking bars and adult-only retail tobacco stores because these places are **public places**.
- Effectively ban smoking of marijuana everywhere except in a private home and maybe private clubs.
- **Public housing is smoke-free (HUD).**
 - **Social equity issue.**



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CONUNDRUM #4 – PRIVATE CLUBS

- Statewide smoke-free workplace law narrowly exempts them.
- Local secondhand smoke law can include them.
 - Would prevent “smoking” marijuana, but not edible marijuana.

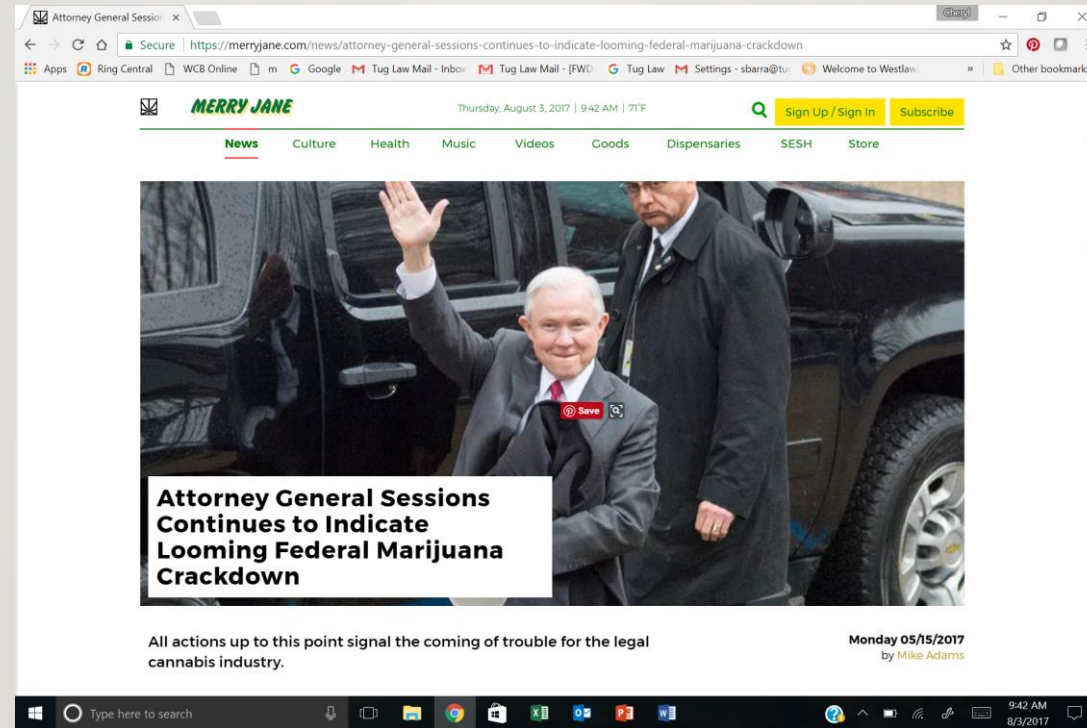


CONUNDRUM #5

- Can't rely on Smoke-free Workplace Law to avoid social consumption establishments.
- Amended law removed “or non-tobacco product designed to be combusted and inhaled” from its definition of “smoking.”
- Now reads “the inhaling, exhaling, burning or carrying of a lighted or heated cigar, cigarette, pipe or other tobacco product intended for inhalation in any manner or form, including the use of electronic cigarettes, electronic cigars, ,electronic pipes or other similar products that rely on vaporization or aerolization.”



CONUNDRUM #6 – ILLEGAL ON FEDERAL LEVEL



SO WHAT?



- Cash business – banks won't touch it.
- Previous administration's standard operating procedures vs. current administration's.
- US Atty Lelling said his office will focus its resources on "fighting the opioid crisis."
- Proceed at your own risk.



AND ...THERE IS ALREADY A LAWSUIT

- Several abutters in Cambridge sued Healthy Pharms (medical marijuana dispensary in Harvard Square).
 - Civil claim for violation of federal criminal law (RICO).



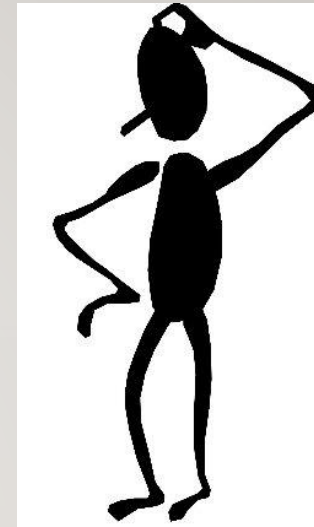
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CONUNDRUM #7 - LOCAL CONTROL

- Boards of Health can enact local regulations that are stricter than state law (not preemptive).
- BUT they cannot be “unreasonably impracticable.”
 - “subject licensees to unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent business person would not operate a marijuana establishment.”
 - What does this mean?



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ANTI-PREEMPTION

JUST NOT “UNREASONABLY RESTRICTIVE”

- “Marijuana establishments and marijuana establishment agents shall comply with all local rules, regulations, ordinances, and bylaws.”
- Nothing in 935 CMR 500.000 shall be construed so as to prohibit lawful local oversight and regulation, including fee requirements, that does not conflict or interfere with the operation of 935 CMR 500.000.”



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CONUNDRUM #8 – CBD - CANNABIDIOL

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IS IT POT OR IS IT NOT?

- “Marijuana”
 - All parts of any plant of the genus Cannabis, not exempted ...
 - Hemp – one of the exemptions.
- “Hemp”
 - The plant of the genus Cannabis with a delta-9-tetrahydrocannabinol that is not more than 0.3%.
- “Cannabidiol”
 - Naturally occurring cannabinoid constituent of cannabis.
 - 1 of at least 113 cannabinoids identified in hemp plants.

TWO CATEGORIES OF CANNABIS PLANTS

- Hemp plants
 - Grown for fiber and seed oil.
 - Industrial hemp – sourced from a low-resin agricultural crop.
- Drug plants
 - Include euphoric THC-rich plants and non-euphoric CBD-rich plants.
 - High-resin horticultural crop, hand-harvested, dried, trimmed and cured.
- Difference – amount of resin.
- And then there are “hybrids”



Can You Get “High” Off Hemp?

“Your lungs will fail before your brain attains any high from smoking industrial hemp”

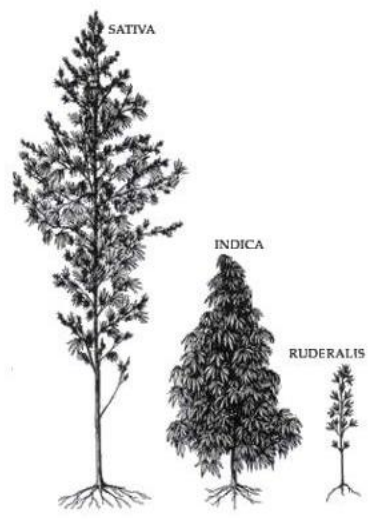
Hemp vs Marijuana

The Difference Between Hemp and Marijuana

Type	Is it Cannabis?	Chemical Makeup	Psychoactive?	Cultivation	Applications
Hemp	Yes	Low THC (< 0.3%)	No	Requires minimal care. Adaptable to grow in most climates.	Automobiles, body care, clothing, construction, food, plastic, etc.
Marijuana	Yes	High THC (5%-35%)	Yes	Grown in carefully controlled atmosphere	Medical and recreational use

Cannabis Sativa vs Cannabis Indica

Difference explained in official terms



Sativa strains are typically taller, loosely branched and have long, narrow leaves. They are usually grown outdoors and can reach heights of up to 20 feet. Sativa plants typically have higher concentration of CBD enzymes, essentially causing no mind-altering effect.

Indica strains are shorter, densely branched and have wider leaves. They are better suited for growing indoors. Indica plants contain higher THC content, which has an intoxicating effect of causing a "body buzz".

*Many hybrids of these plants have been developed recently, so it is more important to examine the exact THC level of a plant rather than strictly categorizing them "sativa" or "indica"



-
- CBD can be found in the flowers, leaves and sticky resin of each type of plant!



PART THREE

CANNABIS CONTROL COMMISSION'S FINAL
REGULATIONS & GUIDANCE



KEY CHANGES IN CCC FINAL REGULATIONS

- No Social Consumption or Home Delivery until February 2019 at the earliest.
- Registered Marijuana Dispensaries (RMDs) that sell adult-use marijuana must set aside 35% of their product or a six-month average of their medical marijuana sales for registered patients.
- Marijuana growers are capped at 100,000 square feet (2.3 acres).
 - To prevent diversion.
- Convicted drug traffickers banned from working in the industry (other than convictions for marijuana trafficking).
- Growers must satisfy minimum energy efficiency and equipment standards established by the CCC.

RELEVANT PORTIONS OF CCC FINAL REGULATIONS

- Edible Cannabis Products “means a cannabis or marijuana product that is to be consumed by humans by eating or drinking. These products, **when created by a Registered Marijuana Dispensary (RMD) shall not be considered a food . . .**” [Same for adult-use now?]
- Law Enforcement Authorities “means local law enforcement unless otherwise indicated.”
- Marijuana Establishment “means a Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, **or any other type of marijuana-related business, except a medical marijuana treatment center.**” (RMD).
- Paraphernalia “means “drug paraphernalia” as defined in M.G.L. c. 94C, §1.”
 - BUT SEE DEFINITION OF “MARIJUANA ACCESSORIES” IN THE LAW (c. 94G).



FEE STRUCTURE

- Cultivator
 - Application fees from \$200 - \$600 – depending on size and indoor or outdoor
 - Annual licensing fee from \$1250 to \$25000 (indoor cultivator)
- Craft Marijuana Cooperative
 - Application fee - \$300
 - Annual licensing fee – depends
- Manufacturing
 - Application fee - \$300
 - Annual licensing fee - \$5000
- Retail
 - Application fee - \$300
 - Annual licensing fee - \$5000



CCC REGULATIONS (CONT.)

-
- Responsible training program – 935 CMR 500.105(2).
 - Comprehensive training program specified.
 - Requirements for the handling of marijuana – 935 CMR 500.105(3).
 - Free of dirt, sand, debris, contamination from mold, rot, other fungus and bacterial diseases, prepared and handled on food-grade stainless steel tables.
 - Subject to requirements for food handlers in 105.CMR 300.000.
 - Waste disposal must be in compliance with all applicable state and federal requirements, including but not limited to those for discharge of pollutants into surface water or ground water. 935 CMR 500.105(12).
 - Organic and recyclable material shall be redirected from disposal in accordance with the waste disposal bans described in 310 CMR 16.02.



LOCAL ACCESS

- “935 CMR 500.000 [these regulations] shall not be construed to prohibit access to authorized law enforcement personnel or local public health, inspectional services, or other permit-granting agents acting within their local jurisdiction. 935 CMR 500.105(14).
- Security plans and procedures shall be shared with local law enforcement authorities and shall include:
 - Description of the location and operation of security system;
 - A schematic of security zones;
 - Name of security alarm and monitoring company;
 - Floor plan or layout of facility. 935 CMR 500.110(6)(e)

EDIBLE ADULT-USES MARIJUANA IS **NO LONGER** CONSIDERED FOOD.

- So that local boards of health don't have to inspect?
- Good Manufacturing Practices for Food – 105 CMR 500.000?
 - Preparation of edibles for off-site consumption (manufacturers/processors/wholesalers).
- Minimum Standards for Food Establishments – 105 CMR 590.000?
 - Regulates sale of retail food (edibles for sale in retail stores, eventually social consumption establishments).
- Requirements for food handlers – 105 CMR 300.000?
 - Reportable Diseases, Surveillance, and Isolation and Quarantine Requirements



EDIBLE MARIJUANA (CONT.)

- If edible is perishable, statement must be on package indicating that it must be refrigerated. 935 CMR 500.150(3).
- Must have a “use by” date. 935 CMR 500.150(3)(d).
- Single serving can only have 5 milligrams of THC.
- Multi-serving packages must be “easily separable” in order to allow an average person to physically separate, with minimal effort, individual servings of the product.



INSPECTIONS AND COMPLIANCE – 935 CMR 500.300

- Lots of discretion
- “Secret Shopper Program”
 - Inspections
 - Compliance checks
- Complaints process
- Deficiency statements
- Plans of correction
- Limitation of sales of marijuana
- Summary cease and desist orders
- Summary suspension orders
- Grounds for denial of license/renewal
 - Sales to minors
- Fines up to \$25,000
- Hearings process
 - Appeals to Superior Court

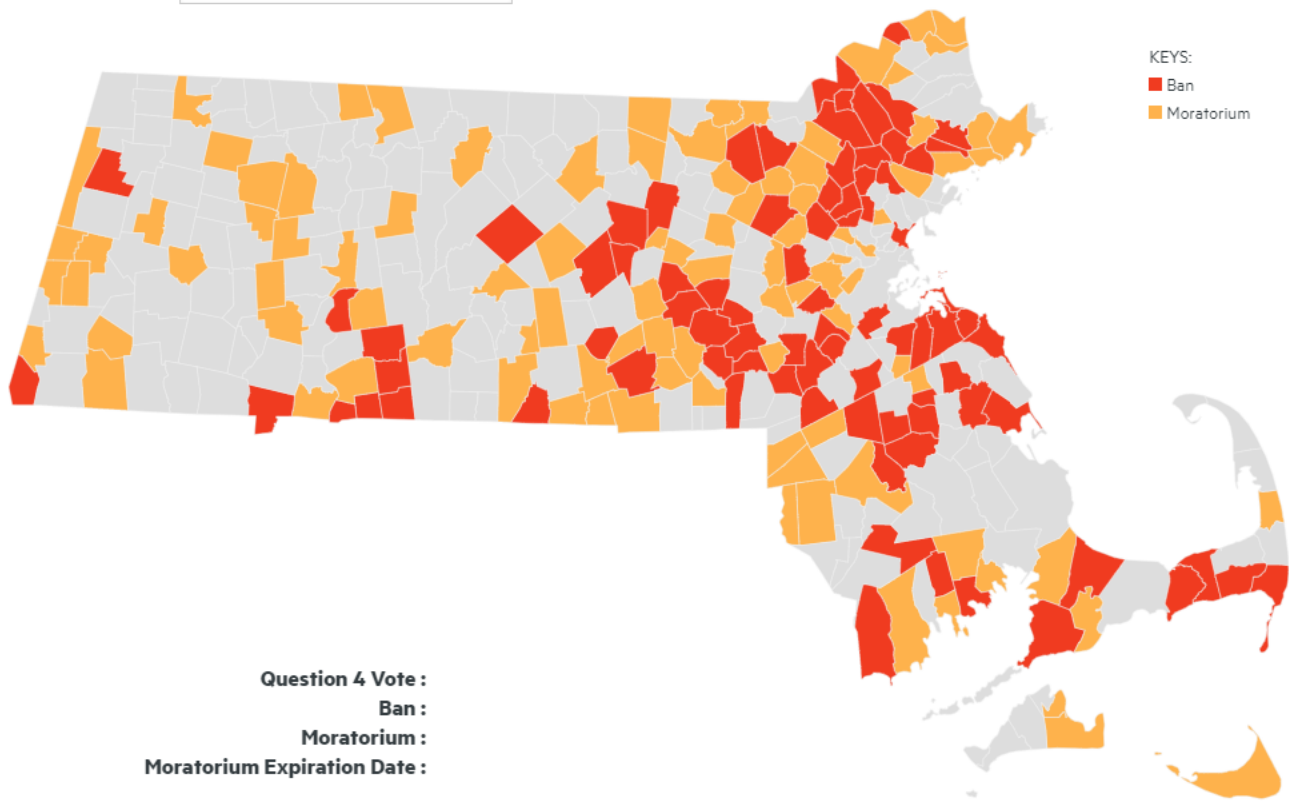
WAIVERS/VARIANCES – 935 CMR 500.700 GROUNDS

- Compliance would cause undue hardship to requester;
- Requestor's noncompliance does not jeopardize the health or safety of any patient or the public;
- The requestor has instituted compensating features that are acceptable to the Commission; and
- The requestor provides written documentation supporting its request for a waiver.



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- The ARTery
- ...

Select municipality:



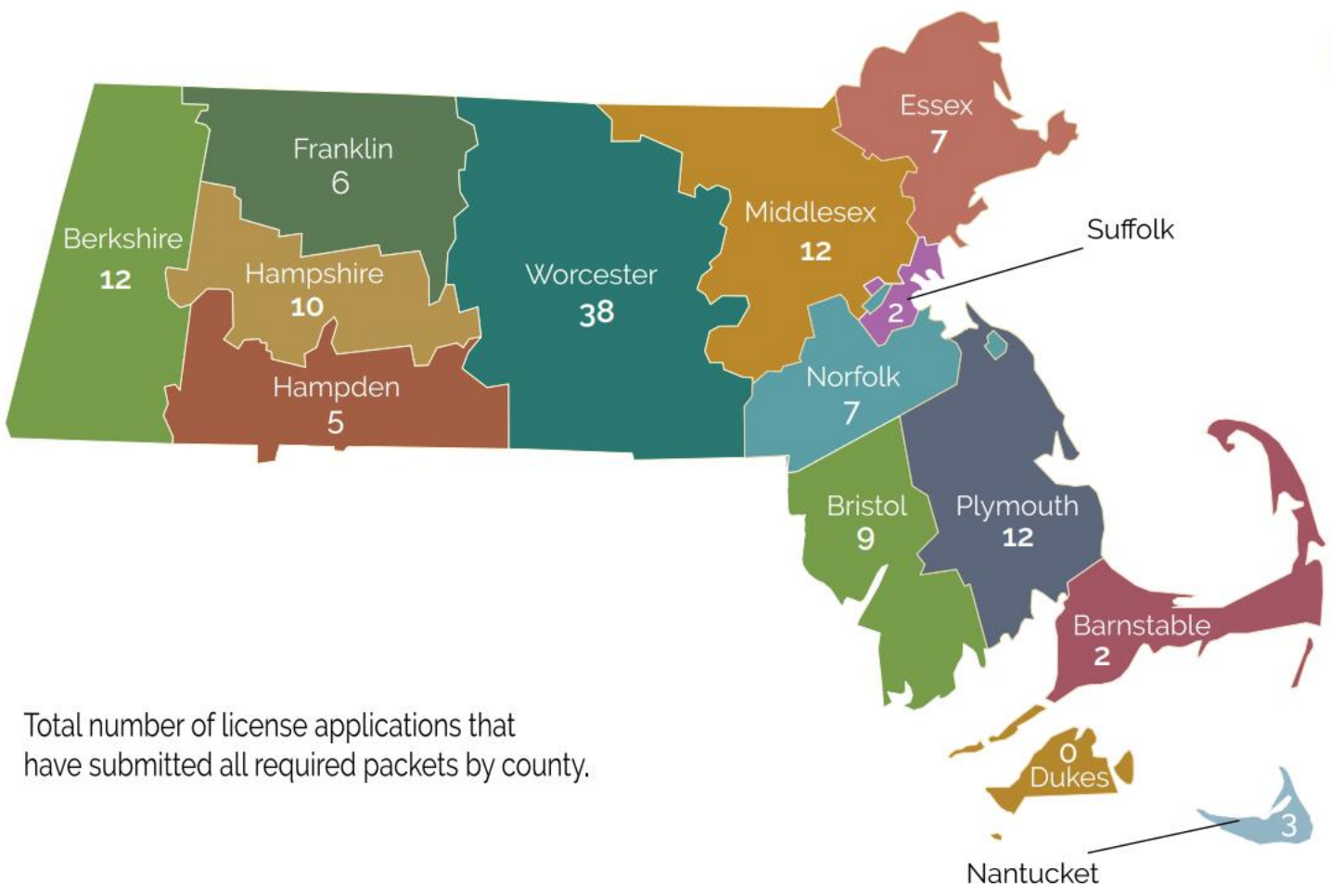
Question 4 Vote :
Ban :
Moratorium :
Moratorium Expiration Date :

SOURCE: WBUR analysis of [Massachusetts Municipal Association Data](#)

Recreational marijuana sales are now legal in Massachusetts. But there are some cities and towns that might never sell a single bud.

More than 80 communities have enacted an outright ban on recreational marijuana shops. Another 110 have some sort of moratorium in place, ostensibly to give the city or town time to put zoning rules in place. Most

Listen Live: Here & N...



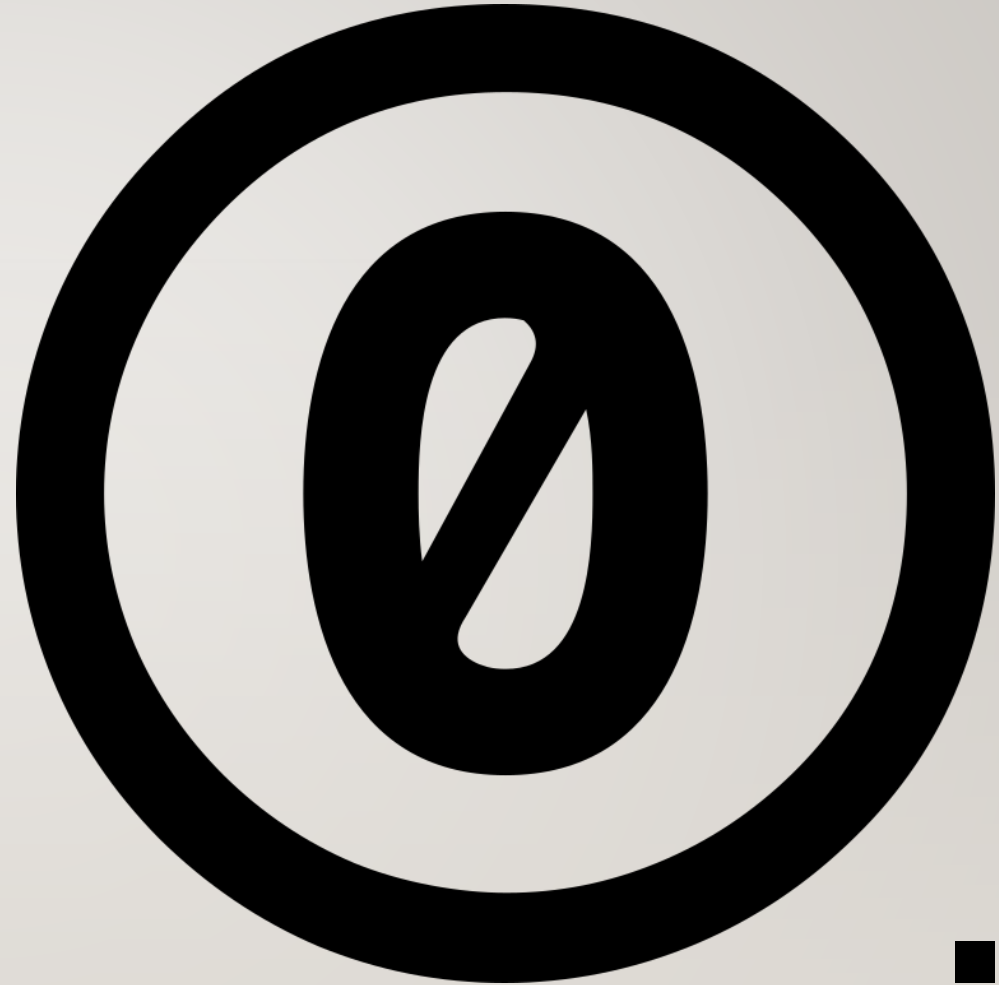
Total number of license applications that have submitted all required packets by county.

SPECIFIC MUNICIPALITIES WITH PROVISIONAL LICENSES

- Amesbury – 3 (m, c, r)
- Salem – 2 (r, l)
- Leicester – 3 (m, r, c)
- Easthampton – 3 (c, m, r)
- Plymouth – 3 (c, m, r)
- Framingham – 1 (l)
- Brookline – 1 (r)
- Northampton – 1 (r)
- Franklin – 2 (m, c)
- Fall River – 3 (c, m, r)
- Lowell – 3 (m, r, r)
- Greenfield – 1 (r)
- Wareham – 1 (r)
- Milford – 3 (c)
- *m = manufacturer *r = retailer
- *c = cultivator *l = lab



CURRENT NUMBER
OF OPERATIONAL
ADULT-USE
MARIJUANA
ESTABLISHMENTS
(9.17.18)



PART FOUR

PROPOSED REGULATIONS FOR
MEDICAL-USE MARIJUANA
OPERATIONS (935 CMR 502-000)



MEDICAL USE OF MARIJUANA DRAFT 9.7.18

- Replaces DPH's Medical Marijuana Program upon Program Transfer
- 124 pages long.
- Not preemptive (935 CMR 501.600).
- Comment period ends 10.29.18.
- Marijuana-infused Product (MIP) “shall not be considered a food or drug as defined in M.G.L. c. 94, §1.
 - Not as clear for adult-use of colocated marijuana operations.
 - But Commission has issued some sort of guidance.

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PART FIVE

PROPOSED REGULATIONS FOR
COLLOCATED ADULT-USE AND
MEDICAL-USE MARIJUANA
OPERATIONS (935 CMR 502.000)



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CO-LOCATED MARIJUANA OPERATIONS (CMOS)

- Entity operating under both an RMD registration and an Adult-Use license
 - Only cultivation, manufacturing and retail adult-use license.
- DPH has the authority to operate medical-use program until the Program Transfer.
- Edibles not food.
- Fees
 - Both RMD and Adult-Use.
- No separate application for CMO – but must provide
 - Plan for inventory that separates adult-use and medical-use.
 - Plan for delivery of medical-use.
 - Plan for separate financial records to ensure compliance of tax laws.



OPERATIONAL REQUIREMENTS - COMMENT PERIOD CLOSES 10.29.18

- Written procedures that comply with both regulations.
- May display in secure locked cases samples of each product offered for sale.
- Plant package tags required after April 1, 2019, as well as tracking number(s) for Seed-to-Sale.
- Must implement procedures for virtual (electronic) separation of medical and adult-use marijuana.
- Security requirements.
- Must provide for physical separation between medical-use and adult-use sales areas.
- Separate patient consultation area.
- Silent on preemption (address during comment period).

PART SIX

POTENTIAL LOCAL BOARD OF
HEALTH REGULATIONS FOR ADULT-
USE AND MEDICAL-USE MARIJUANA
OPERATIONS



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BIG THANK YOU TO THE LOCAL PUBLIC HEALTH WORKING GROUP

- Sam Wong – City of Framingham
- PJ McCann, J.D. and Tim Harrington, J.D. - Boston
- Phoebe Walker and Glen Ayers– Franklin Regional Council of Governments
- Tim McDonald and Tara Gurge – Needham
- Sam Lipson – Cambridge
- Cathleen Liberty – Marlborough
- Karyn Clark – Worcester
- Soloe Dennis – Springfield
- Michelle Desmarais and Mary Chalmers – Lynn
- Cheryl Sbarra, J.D. - MAHB



WHY REGULATE LOCALLY, WHEN A STATE REGULATION EXISTS?



- To enable local enforcement of state regulation.
 - Including compliance checks and inspections.
 - Assuring clean cultivation and distribution.
- To address “head shops” by regulating where marijuana accessories can be sold.
- To enable issuance of local Operating Permits.
- To enable local penalties for selling to someone under the minimum legal sales age.
- To incorporate certain tobacco control strategies into marijuana regulations.
 - No self-service, no vending machines, no roll-your-own machines, etc.

POSSIBLE STRATEGIES

1. Require compliance with sanitary requirements in 105 CMR 500.000 for onsite preparation and consumption of edible marijuana products (good manufacturing practices).
2. Require compliance with 105 CMR 590.000 for food service and retail food establishments (minimum standards for food establishments).
3. Define acceptable sources of marijuana and marijuana products for use in preparing edibles which is incorporated by reference in 105 CMR 590.000.
 - Seed to sale requirements and lab testing probably does this.
4. Require an Operating Permit for all classifications of Marijuana Establishments.
5. Add Registered Marijuana Dispensary to definition of Marijuana Establishments in order to regulate them.



POSSIBLE STRATEGIES

6. Incorporate nuisance law into local regulation.
 - Addresses processing, packaging or repackaging odiferous marijuana products.
 - Addresses outdoor smoking or vaping on residents' decks and social consumption decks.
7. Set hours of operation.
8. Ban out of package sales.
9. Ban self-service displays.
10. Ban vending machine sales.
11. Ban Non-Residential Roll-Your-Own machines.



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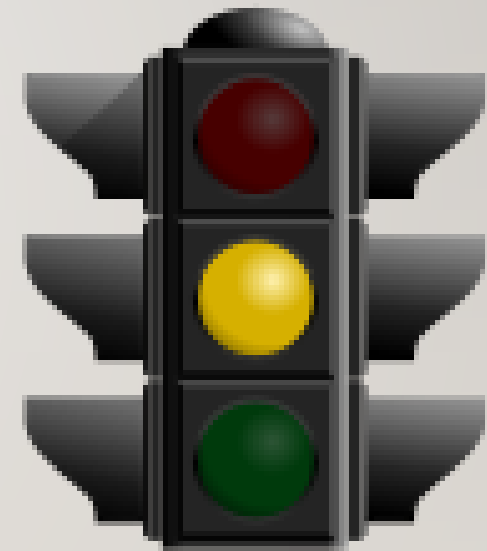
POSSIBLE STRATEGIES

12. Require local enforcement including compliance checks and inspections.
 - Funding from host agreement or operating permit fees.
13. Prohibit distribution of coupons for marijuana.
14. Prohibit free commercial sampling of marijuana.
15. After a hearing, an operating permit can be suspended or revoked.



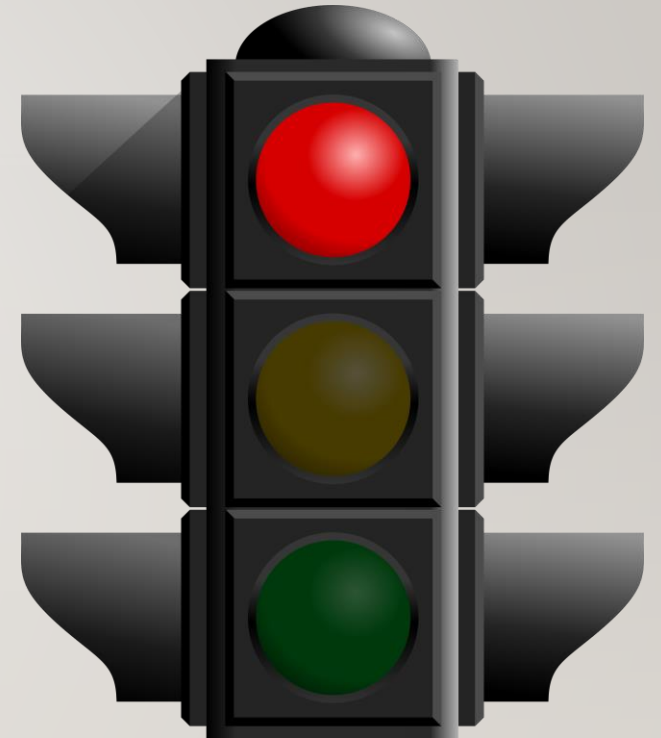
POSSIBLE STRATEGIES

16. Require permit for marijuana establishment agents.
17. Restrict marijuana accessories to marijuana establishments and adult-only retail tobacco stores.
18. Increase minimum legal sales age to 25.
19. Add preschool programs, youth centers and playgrounds to 500-foot buffer zone.
20. Prohibit marijuana establishments from selling alcohol.
21. Prohibit marijuana establishments from holding a tobacco sales permit.



POSSIBLE STRATEGIES

22. Permit and regulate “grow your own” operations.
 - Especially in multi-unit dwellings.
23. Prohibit flavored combustible or vaped marijuana products.





THE FUTURE IS OURS TO CREATE.

PARTING THOUGHTS ...

2 Million US Teens Are Vaping Marijuana

Nearly 1 in 11 U.S. students used marijuana in electronic cigarettes in 2016, heightening concern about the new popularity of vaping.

By Associated Press, Wire Service Content Sept. 17, 2018, at 1:11 p.m.



A school-based survey shows nearly 1 in 11 U.S. students have used marijuana in electronic cigarettes, heightening concern about the new popularity of vaping among teens. (AP/Steven Senne, File) THE ASSOCIATED PRESS



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**collaborate easily
on the most connected
healthcare network**

Free up

BY CARLA K. JOHNSON, AP M

A school-based survey show
cigarettes, heightening heal

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connected healthcare network**

Free up

