



COMMONWEALTH OF MASSACHUSETTS

# Guidance for Municipalities

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Massachusetts Cannabis Control Commission

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## Table of Contents

I.	Introduction .....	4
	Helpful Links.....	4
II.	Types of Marijuana Establishments .....	4
	Marijuana Cultivator .....	5
	Tiers of Marijuana Cultivator.....	5
	Craft Marijuana Cooperative.....	6
	Marijuana Product Manufacturer .....	7
	Marijuana Retailer.....	7
	Medical Marijuana Treatment Center .....	8
	Marijuana Transporter.....	8
	Delivery Licenses .....	8
	Marijuana Research Facility.....	9
	Laboratories.....	10
	Microbusiness.....	10
	Social Consumption .....	11
III.	Role of Cannabis Control Commission.....	11
IV.	Role of Municipalities .....	12
	Host Community Agreements .....	12
	Local Control: Taxes and Fees.....	13
	Community Impact Fee .....	13
	State and Local Taxes .....	13
	Local Control: Bylaws and Ordinances .....	14
	Limiting Marijuana Businesses.....	14
	Issues to Consider for Limiting Numbers .....	15
	Public Nuisance.....	15
	Signage.....	15

	Penalties .....	16
	Transportation .....	16
	Additional Permits.....	16
	Buffer Zones.....	16
V.	The Municipal Role in Commission Licensing Process .....	16
	Licensing Process: Community Outreach Meeting.....	17
	Licensing Process: Host Community Agreement .....	18
	Licensing Process: Municipal Notification and Permitting Timeline .....	18
VI.	Questions? .....	19

## I. Introduction

The following guidance is provided to assist communities working with individuals and businesses seeking to apply for licensure as an adult-use Marijuana Establishment under 935 Code Mass. Regs. § 500.000, a medical-use Medical Marijuana Treatment Center under 935 Code Mass. Regs. § 501.000, or a colocated entity. The Cannabis Control Commission (Commission) has also published guidance to assist municipalities in creating equitable cannabis policies, including as part of the process of negotiating and executing host community agreements, which may be found at:

<https://masscannabiscontrol.com/public-documents/guidance-documents/>. This guidance is not legal advice. If municipalities have questions regarding the legal requirements for licensure, they are encouraged to consult municipal counsel.<sup>1</sup>

Under the “Local control” provisions of G. L. c. 94G, § 3, the Legislature delegated to municipalities control over Marijuana Establishments<sup>2</sup> (MEs) and Medical Marijuana Treatment Centers<sup>3</sup> (MTCs) operating within their borders. Under § 3 and the regulations, municipalities can regulate the number, operations, and locations of potential MEs and MTCs.<sup>4</sup> The Commission, in turn, has broad authority over licensing and registration of these applicants.

### Helpful Links

More resources for municipalities are available at <https://masscannabiscontrol.com/state-local-government/>.

## II. Types of Marijuana Establishments

Chapters 94G and 94I, and the regulations, create different kinds of adult-use MEs and medical-use MTCs. Unlike an MTC (formerly known as a Registered Marijuana Dispensary or RMD), which is permitted to cultivate, process, transport, deliver, and retail Marijuana and Marijuana Products<sup>5</sup> for medical-use under one license<sup>6</sup>, an adult-use ME may only engage in licensed activity, e.g., cultivation,

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<sup>1</sup> The Commission uses the term “counsel” as inclusive of and not limited to the following municipal positions: Town Counsel, City Solicitor, Corporation Counsel, Special Town/Municipal Counsel, and Labor Counsel.

<sup>2</sup> Under G. L. c. 94G, § 1, a Marijuana Establishment is defined as a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

<sup>3</sup> Under G. L. c. 94I, § 1, a Medical Marijuana Treatment Center is defined as the premises approved under a medical use marijuana license.

<sup>4</sup> See e.g., G. L. c. 94G, §§ 3 (a) (2) (iii) and (d); 935 Code Mass. Regs. § 501.170(2).

<sup>5</sup> The use of capitalized terms in this Guidance, such as “Marijuana,” “Marijuana Products” and many others are defined in the [regulations](#). Please refer to the regulations regarding the meaning of a particular term. 935 Code Mass. Regs. §§ 500.002 and 501.002.

<sup>6</sup> This concept is referred to as ‘vertical integration.’



through a specific license type that allows one or more activities. The different adult-use license types are discussed in more detail below. Under G. L. c. 94G, § 16, one licensee may hold up to three licenses per license type, with certain exceptions.<sup>7</sup>

All MEs and MTCs are subject to strict, comprehensive state regulations and inspections by Commission staff. All MEs and MTCs are required to negotiate and execute a host community agreement (HCA) with the municipality in which they seek to locate. There is more detail on Host Community Agreements below and in a separate guidance published by the Commission, which may be found at: <https://masscannabiscontrol.com/public-documents/guidance-documents/>.

A brief list and description of the different types of licenses issued by the Commission are as follows:

### **Marijuana Cultivator**

A Marijuana Cultivator is an entity licensed to cultivate, Process and package Marijuana, and to Transfer Marijuana to other MEs, but not to Consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.<sup>8</sup> Cultivators select what Tier, i.e. size of the grow they will operate, which determines their application and licensing fees. The chart of Tier options is included below.

### **Tiers of Marijuana Cultivator**

Each licensee (except a Craft Marijuana Cooperative) may have three (3) licenses, but the total canopy combined may not exceed 100,000 square feet.<sup>9</sup> For example, a licensee may not have three (3) Tier 11 cultivation licenses because it would exceed the canopy square footage limit.

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<sup>7</sup> The statutory license cap set by the legislature states in relevant part that “[n]o licensee shall be granted more than 3 marijuana retailer licenses, 3 medical marijuana treatment center licenses, 3 marijuana product manufacturer licenses or 3 marijuana cultivator licenses; provided, however, that a licensee may hold 3 marijuana retailer licenses, 3 medical marijuana treatment center licenses, 3 marijuana product manufacturer licenses and 3 marijuana cultivator licenses.” G. L. c. 94G, § 16.

<sup>8</sup> 935 Code Mass. Regs. § 500.002.

<sup>9</sup> “Canopy” means an area to be calculated in square feet and measured using clearly identifiable boundaries of all areas(s) that will contain Flowering and/or Vegetative plants larger than eight inches tall and eight inches wide at any point in time, including all of the space(s) within the boundaries. Canopy may be noncontiguous, but each unique area included in the total Canopy calculations shall be separated by an identifiable boundary which includes, but is not limited to: interior walls, shelves, Greenhouse walls, hoop house walls, garden benches, hedge rows, fencing, garden beds, or garden plots. If Flowering and/or Vegetative plants larger than eight inches tall and eight inches wide are being cultivated using a shelving system, the surface area of each level shall be included in the total Canopy calculation. 935 Code Mass. Regs. § 500.002.



Tier	Canopy Size Allowed
1	up to 5,000 square feet
2	5,001 to 10,000 sq. ft.
3	10,001 to 20,000 sq. ft.
4	20,001 to 30,000 sq. ft.
5	30,001 to 40,000 sq. ft.
6	40,001 to 50,000 sq. ft.
7	50,001 to 60,000 sq. ft.
8	60,001 to 70,000 sq. ft.
9	70,001 to 80,000 sq. ft.
10	80,001 to 90,000 sq. ft.
11	90,001 to 100,000 sq. ft.

For more information about Tier management, see 935 Code Mass. Regs. § 500.050(2) and 935 Code Mass. Regs. § 501.050(2).

### Craft Marijuana Cooperative

A Craft Marijuana Cooperative is a type of Marijuana Cultivator organized as a limited liability company, limited liability partnership, or a cooperative corporation under the laws of the Commonwealth.<sup>10</sup> The Members or shareholders of the cooperative must be residents of the Commonwealth for the 12 months immediately preceding the filing of an application for a license. In addition, the Craft Marijuana Cooperative shall have either one Member that has filed a Schedule F (on IRS Form 1040)<sup>11</sup> within the five years prior to application for licensure; or an agreement to lease land wholly owned by a person or entity that has filed a Schedule F (IRS Form 1040) within the five years prior to application for licensure. Where the agreement to lease land renders the individual or entity filing a Schedule F (IRS Form 1040) a Person or Entity Having Direct or Indirect Control, the Craft Marijuana Cooperative shall report the individual or entity and submit the agreement, as required by 935 Code Mass. Regs. § 500.101(1)(a)1. The Craft Marijuana Cooperative must operate consistently

<sup>10</sup> 935 Code Mass. Regs. § 500.002.

<sup>11</sup> Internal Revenue Service Tax Form indicating profit or loss from farming.



with the Seven Cooperative Principles established by the International Cooperative Alliance in 1995.<sup>12</sup> The cooperative license authorizes it to cultivate, obtain, Manufacture, Process, package, brand and Transfer Marijuana Products and to deliver Marijuana to MEs, but not to Consumers.

The Craft Marijuana Cooperative is limited to one (1) cultivation license and its total locations are limited to cultivating 100,000 square feet of Canopy. A cooperative is not limited in the number of cultivation locations it may operate, provided that for each location over six (6) locations, additional application and licensing fees shall apply. The cooperative may also conduct activities authorized for Marijuana Product Manufacturers at up to three locations. The Craft Marijuana Cooperative is eligible for Tier Expansion and Relegation. See 935 Code Mass. Regs. § 500.050(3).

### **Marijuana Product Manufacturer**

A Marijuana Product Manufacturer is an entity authorized to obtain, Manufacture, Process and package adult-use Marijuana or Marijuana Products, and to transport and Transfer Marijuana Products to other MEs, but not to Consumers.<sup>13</sup> Marijuana Product Manufacturers shall meet all applicable environmental laws, regulations, permits and other applicable approvals including, but not limited to, those related to water quality and quantity, wastewater, solid and hazardous waste management and air pollution control, including prevention of odor and noise.<sup>14</sup> All Edibles prepared by a manufacturer shall be prepared, handled, and stored in compliance with the sanitation requirements in 105 Code Mass. Regs. § 590.000: *State Sanitary Code Chapter X: Minimum Sanitation Standards for Food Establishments*, and with the requirements for food handlers specified in 105 Code Mass. Regs. § 300.000: *Reportable Diseases, Surveillance, and Isolation and Quarantine Requirements*. Safe handling regulations are enforceable by local boards of health.

### **Marijuana Retailer**

A Marijuana Retailer is an entity authorized to transport, sell, Repackage, or otherwise Transfer Marijuana or Marijuana Products to MEs and to sell Marijuana, Marijuana Products, Marijuana Accessories and Branded Goods to Consumers.<sup>15</sup> A Marijuana Retailer can also deliver Marijuana or Marijuana Products to Consumers.<sup>16</sup> A Marijuana Retailer shall provide a retail location accessible to Consumers 21 years of age or older, or, if colocated with an MTC, Registered Qualifying Patients with the Medical Use of Marijuana Program in possession of a Medical Registration Card.<sup>17</sup> A Marijuana

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<sup>12</sup> <https://www.ica.coop/en/cooperatives/cooperative-identity>.

<sup>13</sup> 935 Code Mass. Regs. § 500.002.

<sup>14</sup> 935 Code Mass. Regs. § 500.130.

<sup>15</sup> 935 Code Mass. Regs. § 500.002.

<sup>16</sup> Under the adult- and medical-use regulations, “Consumer” means a person who is 21 years of age or older. 935 Code. Mass. Regs. § 500.002; 935 Code. Mass. Regs. § 501.002.

<sup>17</sup> 935 Code Mass. Regs. § 500.050(8).



Retailer can enter into a Delivery Agreement with a Marijuana Courier to deliver Marijuana or Marijuana Products, and Marijuana Accessories and Branded Goods to Consumers or Patients.<sup>18</sup>

### Medical Marijuana Treatment Center

An MTC (formerly known as an RMD), is an entity licensed under 935 Code Mass. Regs. § 501.101, that acquires, cultivates, possesses, Processes (including development of related products such as Edibles, MIPs, Tinctures, aerosols, oils, or ointments), Repackages, transports, sells, distributes, delivers, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to Registered Qualifying Patients or their Personal Caregivers for medical use. Unless otherwise specified, MTC refers to the site(s) of dispensing, production or cultivation of Marijuana for medical use.<sup>19</sup>

### Marijuana Transporter

There are two types of Marijuana Transporter licenses: (1) a Third-party Transporter; and (2) an Existing Licensee Transporter.

A Third-party Transporter is an entity formerly registered or currently licensed to do business in Massachusetts that does not hold any other ME license pursuant to 935 Code Mass. Regs. § 500.050<sup>20</sup> and is not formerly registered or currently licensed as an MTC pursuant to 935 Code Mass. Regs. § 501.000: *Medical use of Marijuana*. A Third-party Transporter is permitted to transport Marijuana and Marijuana Products between MEs and between MTCs.

An Existing Licensee Transporter is an ME that wishes to contract with other MEs to transport their Marijuana and Marijuana Products to other MEs. All Marijuana Transporters, their agents and employees, who contract with an ME to transport Marijuana Products shall comply with c. 94G and 935 Code Mass. Regs. § 500.000. Marijuana Transporters are allowed to Warehouse Marijuana and Marijuana Products in a form and manner determined by the Commission. See 935 Code Mass. Regs. § 500.050(9).

### Delivery Licenses

There are two types of Delivery Licenses: (1) a Marijuana Courier; and (2) a Marijuana Delivery Operator. The owner of either license type may also own or control one or more ME licenses, subject to the limitations under 935 Code Mass. Regs. § 500.050(10) and (11). Additionally, Delivery Licenses are subject to an exclusivity period: for 36 months from the date the first Delivery Operator Licensee

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<sup>18</sup> 935 Code Mass. Regs. § 500.050(10).

<sup>19</sup> 935 Code Mass. Regs. § 500.002.

<sup>20</sup> Section 935 Code Mass. Regs. § 500.050 details the various Marijuana Establishment types.





recipient receives clearance to commence operations, Delivery Licenses will be available only to businesses controlled by and with majority ownership comprised of Certified Economic Empowerment Priority Applicants or Social Equity Program Participants. No Persons or Entities Having Direct or Indirect Control of a Delivery License shall be granted or hold more than a combined total of two Delivery Operator and/or Marijuana Courier Licenses, subject to the limitations in 935 Code Mass. Regs. § 500.050(1)(b): *Control Limitations*.

Both Delivery Licensee types can sell and deliver Finished Marijuana Products directly to Consumers, but cannot operate as brick-and-mortar retailers. Finished Marijuana Product means a Marijuana Product that is completely manufactured and ready for retail sale and includes Finished Marijuana that has been separated into individual packages or containers for sale.<sup>21</sup> There are differences between the license types in terms of how they acquire and handle Finished Marijuana Products:

- A Marijuana Courier may enter into a Delivery Agreement with a Marijuana Retailer to deliver Finished Marijuana Products, Marijuana Accessories, and Marijuana Branded Goods directly to Consumers or with an MTC to deliver to Patients or Caregivers. It cannot Wholesale, Warehouse, Process, Repackage, or White Label these products.
- A Marijuana Delivery Operator may Wholesale Finished Marijuana Products acquired from a Marijuana Cultivator, Marijuana Product Manufacturer, Microbusiness, or Craft Marijuana Cooperative. It can also sell and deliver Finished Marijuana Products, Marijuana Accessories, and Marijuana Branded Goods directly to Consumers. It can Wholesale, Warehouse, and White Label these products, but it cannot Process or Repackage them.

Note: Although the Commission does not consider a Delivery Operator to be a Marijuana Retailer as defined under 935 Code Mass. Regs. § 500.002 or authorized to engage in permitted activities under 935 Code Mass. Regs. § 500.050(8), a Delivery Operator needs to register as a vendor with the Department of Revenue and collect and remit marijuana retail taxes in accordance with 830 Code Mass. Regs. § 64N.1.1: *Marijuana Retail Taxes*, because it can sell Finished Marijuana Products directly to consumers. While Delivery Licensees may conduct sales through a Third-party Technology Platform Provider, these providers shall not be considered to be Commission licensees. See 935 Code Mass. Regs. § 500.145(1)(g).

### **Marijuana Research Facility**

A Marijuana Research Facility Licensee or Research Licensee may be an academic institution, nonprofit corporation, or domestic corporation or entity authorized to do business in the Commonwealth,

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<sup>21</sup> 935 Code Mass. Regs. § 500.002.



including a licensed ME or MTC, that is licensed to conduct research.<sup>22</sup> A license to operate a Marijuana Research Facility is separate from a Research Permit to conduct a specific research project at a Marijuana Research Facility. Researchers need Commission approval for each Research Permit before conducting their research. A Marijuana Research Facility Licensee may engage in cultivation or product manufacturing of Marijuana or Marijuana Products if the cultivation or product manufacturing process is the subject of its research. A Marijuana Research Facility Licensee may not Transfer Marijuana or Marijuana Products to another ME, other than for testing, or sell to a Consumer, Registered Qualifying Patient, or Caregiver, Marijuana or Marijuana Products that have been acquired for a research project under its Marijuana Research Facility License.<sup>23</sup>

### Laboratories

There are two types of Laboratory Licenses, including an Independent Testing Laboratory and a Standards Laboratory. Persons or Entities Having Direct or Indirect Control in any Laboratory providing testing services for an ME or MTC should not have a financial relationship with the ME or MTC. A Laboratory Licensee, or any associated Person or Entity Having Direct or Indirect Control, may not have a License in any other class. No individual employee of a laboratory providing testing services for MEs or MTCs may receive direct or indirect financial compensation from any ME. See 935 Code Mass. Regs. § 500.050(7).

An Independent Testing Laboratory must be accredited to the most current International Organization for Standardization (ISO) 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement, or is certified, registered or accredited by an organization approved by the Commission. An Independent Testing Laboratory primarily contracts with MEs and MTCs to test products for sale to Consumers and Patients.

A Standards Laboratory is an entity that would otherwise qualify to be an Independent Testing Laboratory but instead performs tests to verify the results of an Independent Testing Laboratory at the request of the Commission.

### Microbusiness

A Microbusiness is an entity that can be either a Tier 1 Marijuana Cultivator or Marijuana Product Manufacturer, or both, and, if in receipt of a Delivery Endorsement issued by the Commission, may deliver Marijuana or Marijuana Products produced at its licensed location directly to Consumers. See 935 Code Mass. Regs. § 500.002.

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<sup>22</sup> 935 Code Mass. Regs. § 500.002.

<sup>23</sup> 935 Code Mass. Regs. § 500.147.



## Social Consumption

A Social Consumption Establishment is an entity licensed to sell Marijuana or Marijuana Products and allow consumers to consume Marijuana or Marijuana Products solely on its Premises.<sup>24</sup> The Social Consumption Pilot Program is a program where a limited number of Social Consumption Establishments are run in certified municipalities. The Commission has developed regulations around the licensing of these entities, and will commence the Social Consumption Pilot Program when there are either statutory or regulatory changes which facilitate a legitimate vehicle for local approval of this license type. See 935 Code Mass. Regs. § 500.050(6).

### III. Role of Cannabis Control Commission

The Commission has broad authority over the licensing of MEs and MTCs and the registration of agents.<sup>25</sup> Established in 2017, the Commission regulates a broad range of licensed activity, including cultivation, product manufacturing, transportation, delivery, and retail activities, and requires that all Marijuana and Marijuana Products be traceable through the Commission approved seed-to-sale tracking system.<sup>26</sup> It has also established regulatory requirements to address public safety, health, and welfare concerns such as the testing<sup>27</sup>, potency, packaging, labeling, advertising<sup>28</sup>, dispensing, and diversion of Marijuana and Marijuana Products.<sup>29</sup> It encourages market participation by individuals and communities disproportionately impacted by marijuana prohibition and enforcement, women, minority, and veteran-owned businesses, and businesses of all types and sizes, including cooperatives.<sup>30</sup>

As a licensing agency, the Commission reviews applicants' qualifications for licensure, including background checks and suitability determinations, prior to issuing provisional and final licenses and ultimately approving a licensee to commence operations. As part of their licensing application process, applicants must hold a community outreach meeting and municipalities must certify compliance with all local bylaws and ordinances.<sup>31</sup> The Commission also requires applicants to submit a Positive Impact Plan and a Diversity Plan, but components of those plans will not reflect any provisions of an HCA (for example, local hiring or spending).

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<sup>24</sup> 935 Code Mass. Regs. § 500.002.

<sup>25</sup> G. L. c. 94G, § 4.

<sup>26</sup> See information made available by the Commission's current tracking software vendor, Metrc, at <https://www.metrc.com/massachusetts>.

<sup>27</sup> 935 Code Mass. Regs. § 500.160; 935 Code Mass. Regs. § 501.160.

<sup>28</sup> 935 Code Mass. Regs. § 500.105; 935 Code Mass. Regs. § 501.105

<sup>29</sup> 935 Code Mass. Regs. § 500.110; 935 Code Mass. Regs. § 501.110.

<sup>30</sup> G. L. c. 94G, § 4 (a ½) (iv) and (xxvii).

<sup>31</sup> 935 Code Mass. Regs. § 500.101(1)(a)9 and 10; 935 Code Mass. Regs. § 501.101(1)(a)9 and 10.



Once a license has been issued, the Commission may inspect MEs and MTCs, investigate close associates of a licensee whom the Commission suspects is involved in the financing, operation, or management of such licensee, impose fees and fines, and conduct adjudicatory proceedings. It may also restrict, revoke, or suspend a license.

The Commission has developed relationships with federal, state, and municipal officials in order to address areas where it shares or cedes control. It may adopt, amend, or repeal regulations for the implementation, administration, and enforcement of the law; refer cases for criminal prosecution to the appropriate law enforcement authorities; monitor federal activity regarding marijuana and hemp; and prepare and publish research studies, legislative reports, or related materials.

#### **IV. Role of Municipalities**

The Local control provisions under G. L. c. 94G both authorize and limit the way in which municipalities can control MEs and MTCs in their communities.

Below is a brief overview of provisions relating to municipal control. Any decision to implement local controls on marijuana should be made in consultation with a municipality's attorney. The Commission has published helpful guidance documents which may be found at:

<https://masscannabiscontrol.com/public-documents/guidance-documents/>.

##### **Host Community Agreements**

Under state law, MEs and MTCs are required to execute Host Community Agreements (HCAs) with the municipalities in which they plan to operate. The agreement must stipulate the responsibilities of the community and the ME or MTC. An HCA is a required component of a license application, so an applicant must execute an HCA with a municipality prior to submitting an application with the Commission. See G.L. c. 94G, § 3.

The HCA may include a community impact fee of up to 3% of gross sales to be paid to the host community, as long as the fee is reasonably related to real costs imposed on the municipality due to the ME or MTC operating there. The agreement to pay a community impact fee may not be effective for a period longer than five years.<sup>32</sup> Any cost to a city or town imposed by the operation of an ME or MTC must be documented and is considered a public record under Massachusetts Public Records Law.<sup>33</sup>

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<sup>32</sup> G. L. c. 94G § 3 (d).

<sup>33</sup> G. L. c. 66, § 10.



The Commission encourages municipalities to carefully consider the impact of the particular ME or MTC proposed for a community, as well as the benefits it may bring in local revenue and employment that would offset certain local impacts when negotiating an HCA. The Commission encourages municipalities to consider the impact to smaller, equity and disadvantaged business entities when negotiating community impact and other contributions which may be required prior to executing an HCA. The Supreme Judicial Court’s decision in *Mederi, Inc. v. Salem* emphasized the need for municipalities to consider equity factors for all types of would-be applicants for licensure.<sup>34</sup>

## Local Control: Taxes and Fees

### Community Impact Fee

A municipality may elect to incorporate a community impact fee into the terms of the HCA. A municipality that elects to incorporate a community impact fee may collect a figure that represents no more than 3% of the annual gross sales by an ME or MTC, including a Delivery Operator. The community impact fee is designed to compensate the municipality for the financial impacts “...reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center[.]”<sup>35</sup> The municipality in turn is obligated to maintain the records documenting these costs. The Commission recommends the municipality maintain these records in a form and manner such that they will be easily producible subject to a public records request for the records. Municipal cost documentation is explicitly defined as a public record under G. L. c. 4, § 7, clause 26.

### State and Local Taxes

There are three different local and state taxes imposed on the retail sale of adult-use marijuana, which is passed onto the Consumer, but not Patients and Caregivers unless they are purchasing accessories and branded goods. The state sales tax and state excise tax are collected on each sale by the Department of Revenue (DOR) and then distributed to municipalities at least four times per year.<sup>36</sup> The DOR also empowers a municipality to impose an additional tax, referred to as the local tax option, of 3% on retail transactions for Marijuana or Marijuana Products.<sup>37</sup>

Taxes on delivery transactions made by Delivery Couriers relate back to the municipality where the originating Marijuana Retailer is located. Taxes on delivery transactions made by Delivery Operators relate back to the municipality where the Delivery Operator is licensed to do business. More information on delivery is available at: <https://masscannabiscontrol.com/applicants->

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<sup>34</sup> *Mederi, Inc., v. City of Salem*, 488 Mass. 60 (2021).

<sup>35</sup> G. L. c. 94G, § 3 (d).

<sup>36</sup> Adult-use marijuana is subject to the: 1) state sales tax of 6.25%; 2) state excise tax of 10.75%; and 3) the local option for cities or towns, a figure up to 3% on all *retail* transactions. G. L. c. 64N, §§ 2, 3 (a).

<sup>37</sup> 830 Code Mass. Regs. § 64N.1.1.



### Local Control: Bylaws and Ordinances

A community may adopt ordinances and bylaws that impose reasonable safeguards on the operation of MEs and “any business dealing in marijuana accessories,” presumably, MTCs, so long as the restrictions are not unreasonably impracticable and do not conflict with Chapters 94G and 94I, or regulations promulgated by the Commission.<sup>38</sup>In other words, the local restrictions cannot be so difficult to comply with that they would 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 businessperson would not operate an ME or MTC.<sup>39</sup>

A municipality may determine that a proposed marijuana-related use falls under an existing use authorized by its bylaws or ordinances, but if a municipality elects to create new ordinances or bylaws with respect to MEs or MTCs, it may implement ordinances or bylaws that restrict the time, place, and manner of ME or MTC operations and any business dealing in Marijuana Accessories. However, local zoning bylaws or ordinances are not permitted to operate to prevent the conversion of an MTC formerly registered with the Department of Public Health (DPH) prior to July 1, 2017, that is engaged in the cultivation, manufacture or sale of Marijuana or Marijuana Products, to an adult-use ME engaged in the same type of activity.<sup>40,41</sup> The Commission interprets conversion to include not only replacing the operation of an MTC entirely with the operation of an ME, but also addressing colocated operations, i.e. an establishment that sells both medical-use and adult-use marijuana.

### Limiting Marijuana Businesses<sup>42</sup>

Under G. L. c. 94G, § 3, a municipality may adopt bylaws and ordinances that limit the number of MEs in its community, but it must submit any bylaw or ordinance for approval to the voters if the ordinance or by-law would:

- Prohibit the operation of one (1) or more types of ME within the municipality;
- Limit the number of Marijuana Retailers to fewer than 20% of the number of liquor licenses (retail sale not to be drunk on premises) issued in the municipality under G. L. c. 138, § 15. For

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<sup>38</sup> G. L. c. 94G § 3 (a).

<sup>39</sup> G. L. c. 94G, § 1.

<sup>40</sup> G. L. c. 94G § 3 (a) 1.

<sup>41</sup> The Supreme Judicial Court’s decision in *CommCan, Inc. & another v. Town of Mansfield*, SJC-139029, provides discussion on this particular issue.

<sup>42</sup> Prior to December 31, 2018, municipalities may have elected to ban Marijuana in their community. Moratoriums on marijuana businesses are no longer permissible. Municipalities may however ban Social Consumption Establishments. The Commission cautions local officials from amending their zoning bylaws or ordinances in a manner that could be deemed to conflict with the statute and recommends consulting the City Solicitor and Town Counsel regarding any new zoning amendments to this effect.



example, if a municipality has 100 such liquor licenses, that municipality may set a maximum limit of 20 marijuana retailers; or

- Limit the number of any type of ME to fewer than the number of MTCs registered to engage in the same type of activity.

If a municipality chooses to enact any of the above-listed enumerated restrictions, the following procedures shall be followed:

- The city solicitor or town counsel must prepare a summary of the proposed ordinance or bylaw which shall make clear the number and types of MEs which shall be permitted to operate under the proposed ordinance and bylaw and shall be included on the ballot;
- 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]”;
- If the majority of the votes cast in answer to the question are in the affirmative, the city or town may adopt the bylaw or ordinance, but if the majority of votes cast is in the negative, the city or town shall not adopt the by-law or ordinance; and
- The ballot question 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 by the city or town council, with the approval of the mayor or chief executive officer of a city that does not have a mayor, and subject to a municipal charter, if applicable.<sup>43</sup>

### Issues to Consider for Limiting Numbers

If a municipality is calculating 20% of its G. L. c. 138, § 15 liquor licenses, and the calculations result in a number less than one, the Commission recommends that the municipality round up to one. If the calculation results in a fraction greater than one, the Commission recommends rounding up to the nearest whole number.

### Public Nuisance

A municipality is permitted to restrict the cultivation, processing, and manufacturing of marijuana that is a public nuisance through ordinances or bylaws.<sup>44</sup>

### Signage

A municipality is permitted to establish reasonable restrictions on public signs related to MEs, but if the restriction is more restrictive than those imposed by the Commission, the municipality’s restriction cannot be stricter than any restriction it may have on retail establishments that sell alcoholic beverages

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<sup>43</sup> G. L. c. 94G, § 3.

<sup>44</sup> G. L. c. 94G, § 3 (a) 3.





in the municipality.<sup>45</sup>

### **Penalties**

A municipality is permitted to establish civil penalties for violation of an ordinance or bylaw enacted pursuant to the Local Control provisions of G. L. c. 94G, § 3, but the penalty must be similar to that imposed for violations of an ordinance or by-law related to alcoholic beverages.<sup>46</sup>

### **Transportation**

Municipalities are prohibited from barring the transportation of Marijuana or Marijuana Products or adopting an ordinance or bylaw that makes the transportation of Marijuana or Marijuana Products unreasonably impracticable.<sup>47</sup>

### **Additional Permits**

Additional Local Permits for adult-use may be required. Although municipalities are prohibited from using a zoning bylaw or ordinance to prevent the conversion of an MTC to an ME, the Commission does not interpret the word “prevent” to prohibit the municipality from requiring an MTC that is eligible under the statute to apply for any additional local permits required to change its existing operation to an ME for adult-use. The Commission cautions local permitting boards from exercising their discretion in acting on a request for a local permit in a manner that could be deemed to conflict with the statute and recommends consulting the City Solicitor and Town Counsel during their decision-making.

### **Buffer Zones**

Under state law, a Marijuana Establishment may not be located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12.<sup>48</sup> Buffer zones are measured from “door to door”. Municipalities may adopt an ordinance or bylaw to reduce that distance requirement. 935 Code Mass. Regs. § 500.110(3); 935 Code Mass. Regs. § 501.110(3).

## **V. The Municipal Role in Commission Licensing Process**

Separate and apart from the Commission’s licensing process, a municipality must also implement its own municipal review process, so long as it does not conflict with state laws and regulations governing

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<sup>45</sup> G. L. c. 94G, § 3 (a) 4.

<sup>46</sup> G. L. c. 94G, § 3 (a) 5.

<sup>47</sup> G. L. c. 94G, § 3 (c).

<sup>48</sup> G. L. c. 94G, § 5 (b) 3.





MTCs and MEs.

As part of the application submitted with the Commission for a provisional license, applicants must demonstrate that they have held a community outreach meeting within the past six months and executed a Host Community Agreement with the municipality (or that the applicant obtained a waiver of the HCA requirement by demonstrating that the municipality did not require this agreement to operate within its borders). The applicant must also demonstrate compliance with all municipal requirements. To do so, the Commission will directly provide the municipality with a Municipal Notice form to be completed by the municipality. The municipality has 60 days to complete this form, which is used to inform the Commission that the applicant has complied with all municipal bylaws and ordinances. The Commission will reach out to the municipality first to establish a main contact. In this respect, municipalities should ensure that all publicly available contact information is accurate and up to date.

### **Licensing Process: Community Outreach Meeting**

Applicants are required hold a community outreach meeting at least six (6) months prior to submitting their application for Commission review. The community outreach meeting may occur prior to or after the HCA is complete and must meet with the following requirements:

#### **Notice:**

- The Notice must contain the time, place, and subject matter of the meeting, including the proposed address of the ME or MTC, that was published in a newspaper of general circulation in the city or town at least 14 calendar days prior to the meeting;
- A copy of the meeting notice must be filed with the town or city clerk, the planning board, the contracting authority for the municipality, and local marijuana licensing authority (if applicable);
- Attestation that at least one meeting was held within the municipality where the establishment is proposed to be located;
- Attestation that at least one meeting was held after normal business hours; and
- Attestation that notice of the time, place and subject matter of the meeting, including the proposed address of the ME, was mailed at least seven calendar days prior to the community outreach meeting to abutters of the proposed address of the ME, and residents within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such Owner is located in another city or town.

Applicants should promote the accessibility of community outreach meetings by simultaneously allowing for virtual attendance and by providing support to persons with hearing impairment.

Note that in circumstances where it is necessary to protect the public health, safety, and welfare, the



Commission will not enforce the requirement of an in-person community outreach meeting. The Commission's Final Executive Order permitting virtual Community Outreach Meetings is available here: <https://masscannabiscontrol.com/2021/08/final-administrative-order-allowing-virtual-web-based-community-outreach-meetings-august-30-2021/>.

**Information Discussed:** Information presented at the community outreach meeting must include, but not be limited to:

- The type(s) of ME or MTC, to be located at the proposed address;
- Information adequate to demonstrate that the location will be maintained securely and steps to be taken by the ME or MTC to prevent diversion to minors;
- A plan by the ME or MTC to positively impact the community;
- Information adequate to demonstrate that the location will not constitute a nuisance as defined by law; and
- An attestation that community members were permitted to ask questions and receive answers from representatives of the ME or MTC.

The Commission reserves the right to modify these requirements consistent with state orders or other executive orders. See: <https://www.mass.gov/service-details/updated-guidance-on-holding-meetings-during-the-covid-19-state-of-emergency/>.

A sample Community Outreach Public Notice template is available on the Commission website at: <https://masscannabiscontrol.com/document/community-outreach-public-notice-template/>.

The Community Outreach Meeting Attestation form is available on the Commission website at: <https://masscannabiscontrol.com/document/community-outreach-meeting-attestation-form/>.

### **Licensing Process: Host Community Agreement**

Documentation in the form of a single-page certification signed by the contracting authorities for the municipality and the applicant evidencing that the applicant for licensure and host municipality have executed a Host Community Agreement must be submitted to the Commission. Each license applicant (even if it is the same company) must sign an HCA for each license type.

A blank Host Community Certification Form is available on the Commission website at: <https://masscannabiscontrol.com/document/host-community-agreement-certification-form/>

### **Licensing Process: Municipal Notification and Permitting Timeline**

**Municipal Notice** - Once the Commission determines an application is complete, it is required to notify



a municipality that it has received a completed application for an ME or MTC in the municipality.

**60 Day Deadline** - The municipality has 60 days from receipt of the Municipal Notice to notify the Commission if the applicant is not in compliance with local ordinances or bylaws. If such notification from the municipality is not received by the Commission within 60 days, the applicant will be deemed by the Commission to be compliant with all applicable local ordinances and bylaws.

**Local Permits** - If a local ordinance or bylaw requires local permitting or licensing, the applicant does not need to have the permitting or licensing in place at the time of the notice to a municipality, but the Commission needs to know whether such permitting or licensing is required for that particular location.

**Provisional License** - The applicant will receive a provisional license after it is deemed compliant so that the applicant can seek the necessary local permits or licenses prior to requesting a final license from the Commission. A provisional license allows the applicant to develop, but not operate, the business.

**Final License** – The Commission will issue a final license once the applicant has passed all the necessary inspections and received all necessary local permits and licenses. The final license must be posted in a conspicuous location on the business premises, and the Commission will issue a Commence Operations notice that gives the applicant permission to sell Marijuana. In other words, the licensee may possess and otherwise acquire marijuana, but not dispense, sell, or otherwise transport marijuana to other MEs, or to consumers, until upon inspection and receipt of permission from the Commission to commence full operations. Licenses must be renewed annually.

## VI. Questions?

If you have additional questions, please contact the Commission at (774) 415-0200 or [Commission@CCCMass.com](mailto:Commission@CCCMass.com).

