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Massachusetts Cannabis Law Resources and Information Guide



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This guide is intended for use as a resource by business owners and operators, financial experts, investors, and service providers who operate—or are planning to operate—in the expanding and evolving medical- and adult-use marijuana marketplaces. The guide provides information about and links to key cannabis industry laws, people, organizations, and publications in the Commonwealth of Massachusetts and nationally. It is organized into four sections: statutes and regulations; a description of the application process; municipal issues; and lists of applicable state offices, agencies and key personnel. As used in this summary, the terms marijuana and cannabis are used interchangeably.

The cultivation, distribution, sale, possession, and use of marijuana or marijuana-based products are illegal under federal law, even where a state law permits such activities. Compliance with state law does not assure compliance with federal law. Any information in this publication or on our website is not intended to provide any assistance in violating federal law.

Statutes and Regulations

Massachusetts Medical Use Cannabis Laws

In November 2012, Massachusetts voters passed The Act for the Humanitarian Medical Use of Marijuana, which became effective on January 1, 2013. Regulations issued by the Massachusetts Department of Public Health (DPH), effective on May 24, 2013, have helped to clarify procedures to register qualifying patients, personal caregivers, registered marijuana dispensaries (RMDs), and RMD agents. In December 2018, the Massachusetts Cannabis Control Commission (CCC) assumed control over DPH medical cannabis duties. The CCC substantially adopted the DPH medical cannabis regulations, and employed the 22 staff members who previously worked at the DPH.

Massachusetts Adult-Use Cannabis Laws

In November 2016, Massachusetts voters passed The Regulation and Taxation of Marijuana Act, which became effective on December 15, 2016. Under this law, adults may possess and use marijuana in limited quantities, with retail facilities also permitted to open following development of a licensing scheme.

On July 28, 2017, Governor Baker signed new legislation, the Act to Ensure Safe Access to Marijuana (Act), which established new governing principles for the regulation of adult-use marijuana. In summary, the Act:

- provides cities and towns the ability to ban or limit the development of adult-use marijuana establishments and to address municipal concerns, where appropriate;
- establishes a five-member CCC to regulate both the adult-use and, as of year-end 2018, medical marijuana industries.
- establishes a 25-member Cannabis Advisory Board with five appointees each from the Governor, Treasurer and Attorney General, and ten appointees who are to be *ex officio* appointees, with expertise and knowledge relevant to the Board's mission; and
- establishes requirements that the CCC set potency limits for edible marijuana products and that it adopt packaging requirements that conform to a detailed list of health and safety protections.

Massachusetts Regulations

State medical-use regulations for medical-only and co-located medical/adult-use operations, respectively, following incorporation by the CCC at year-end 2018, can be found [here](#) and [here](#). As of January 2019, approximately 40 medical dispensaries are in operation with numerous others having provisional license status.

Statutes and Regulations — CONTINUED

Massachusetts Regulations—continued

State adult-use regulations can be found at 935 CMR 500 et seq., available at [this link](#). These adult-use regulations describe the licensing procedures and operational rules for adult-use retail outlets, cultivation facilities, manufacturing facilities, transportation companies, microbusiness ventures, testing laboratories, and agents employed by such establishments. The CCC began to review license application in Spring 2018, with priority given to existing licensed medical operators and those qualifying and certified as Economic Empowerment applicants. It issued its first provisional adult-use licenses in September 2018, followed later in Fall 2018 by the first final licenses and certificates permitting commencement of operations by adult-use licensees. As of January 2019, the CCC has issued its 100th license (provisional, final or operating certificate), with two testing laboratories and more than a half-dozen adult-use retail stores open around the Commonwealth.

Municipal Zoning Regulations

Municipalities may not ban medicinal cannabis dispensaries, but may enact zoning regulations affecting medical-use facilities. For example: Boston Amendment No. 393 (August 16, 2013) and Amendment No. 387 (January 26, 2013).

Municipalities also may enact regulations affecting adult-use facilities. In particular, municipalities may ban or limit adult-use facilities, provided that they comply with applicable procedural requirements in the Act. In cities or towns in which the majority of voters voted “Yes” on the 2016 Ballot Question, voters must be polled before adult-use facilities can be banned. Cities or towns in which the majority of voters did not vote “Yes” may ban adult-use facilities without the need for a municipality-wide vote. Cities or towns that permit adult-use sales may limit the number of marijuana retailers to not fewer than 20% of the number of retail liquor licenses issued (i.e. not including licenses issued to restaurants or bars). To date, approximately 100 cities and towns have banned cannabis totally and numerous other municipalities have enacted municipal limits. Litigation is underway regarding the processes to ban or limit cannabis, including whether bans or limitations must be enacted via a zoning bylaw (which typically requires a two-thirds majority) rather than a majority vote of any authorized city or town body.

State and Local Tax Rates

Tax rates under the adult-use marijuana regulations are as follows:

- 10.75% excise tax on top of the normal 6.25% sales tax to support the costs of regulating the industry and to fund initiatives in public health, public safety, police training, restorative justice, and workforce development;
- An optional 3% local tax adding up to a 20% maximum tax; and
- Medical use marijuana will remain untaxed.

Statutes and Regulations — CONTINUED

Federal Law

Notwithstanding state law authorizations, cannabis use and possession are still federally prohibited by Chapter 13 of the Controlled Substances Act, 21 USC §§801 et seq. Please see the disclaimer referenced earlier in this guide.

Federal Tax Code Limitations

Federal Tax Code Section 280E prohibits federal income tax deductions for cannabis-related business costs, except for cost of goods sold (i.e. product costs can be deducted, but business expenses and other items such as rent, salaries, marketing/advertising, etc. are not deductible). The tax code explicitly applies to state-legal but federally-illegal cannabis trafficking.

The adverse effect of Section 280E may be addressed, in part, through planning (e.g., documentation and allocation of all production costs and employee non-cannabis second trade or business activity; choice of “C” corporation, “S” corporation, LLC pass through, or other entities; etc.). In addition, accounting method tax issues must be addressed and material accounting work will be required.

License Application Process

Medical Use— Registered Marijuana Dispensary (RMD)

The current application process for a medical-use dispensary, following incorporation within the CCC, is set forth [here](#) on the CCC website. One important change implemented in the July 2017 Act is that medical-use licensees no longer have to be non-profit entities. Existing non-profit entities may convert to for-profit status following a process established by the DPH and now administered by the CCC and Massachusetts Office of the Secretary of State.

Adult Use

As noted earlier, the 935 CMR 500 et seq. regulations have been promulgated, effective March 15, 2018. The regulations cover a half-dozen types of licenses, including retail dispensaries, cultivation, production, craft cannabis, microbusiness, and laboratories. The CCC has applied these rules to develop application forms for each license. Each application includes four parts, which can be submitted separately or collectively. The four parts consist of: Notice of Intent, Background Check, Management and Operational Processes, and a Fee.

License Application Process — CONTINUED

Adult-Use—continued

The CCC reviews each application for completeness and compliance with the applicable regulations. In many cases, the CCC will send notices identifying application sections or submitted applicant policies that require modification. Once all application parts are approved, the CCC grants a provisional license, either as filed or with specified conditions. A provisional license authorizes a licensee to commence buildout and implementation of operational measures. A final license and an operating certificate, respectively, will be issued once the licensee passes final CCC inspections.

Application packages require the applicant to submit a form certifying that the applicant and municipality have agreed to and signed a Host Community Agreement (HCA). The CCC does not, however, require production of an HCA, nor does the CCC substantively review the HCA to ensure that it complies with restrictions and limits established in the Act. The CCC has indicated support for legislation to confer express authority to review HCAs for compliance with applicable legal restrictions.

Future Adult-Use Categories

The CCC regulations do not currently include licenses for social-use establishments (i.e., cannabis cafes) and delivery-only businesses, each of which is under consideration by the CCC, with additional regulations expected, if at all, during the first half of 2019.

Municipal Issues

As part of the medical- and adult-use processes, applicants will need to select a specific site for their licensed operations and provide proof to the CCC that the municipality supports or does not oppose the proposed licensed operation. In the case of an adult-use operation, a formal HCA is required. Municipalities may require payments to offset the reasonably expected costs associated with the marijuana establishment. Licensees also must work with the municipality to meet all applicable local zoning and permitting requirements and, typically, negotiate site-specific issues.

State Offices and Agencies

Cannabis Control Commission

Commissioners:

- Steven Hoffman (Chair), former Bain and Company executive (appointed by Treasurer Goldberg);
- Jen Flanagan, former State Senator (appointed by Governor Baker);
- Britte McBride, former legal counsel to the Massachusetts Department of Public Safety; (appointed by Attorney General Healey);
- Kay Doyle, former deputy general counsel at the Massachusetts Department of Public Health and “primary counsel” for the medical marijuana program (consensus appointment by Governor, Attorney General, and Treasurer); and
- Shaleen Title, former head of cannabis consulting firm THC Group (consensus appointed by Governor, Attorney General, and Treasurer).

Executive Director: Shawn Collins, former attorney working for Treasurer Deb Goldberg.

General Counsel: Christine Baily, former staffer at the Supreme Judicial Court and Assistant Attorney General in the Administrative Law Division of the Government Bureau.

Communications Director: Cedric Sinclair, formerly of UMass Boston.

Licensing Director: Kyle Potvin, former staffer at the Department of Transportation.

The CCC has been working to complete its staffing, both for adult-use and medical-use purposes and plans to eventually move to permanent office space in Worcester, with a satellite office in Boston.

Cannabis Advisory Board

As previously discussed, the Cannabis Advisory Board is a 25-member group with expertise in cannabis regulatory issues. The board is organized into four subcommittees, each with a Chair and assigned members:

- Cannabis Industry
- Market Participation
- Public Health
- Public Safety and Community Mitigation

About Davis Malm

Founded in 1979, Davis, Malm & D'Agostine, P.C. is a premier mid-sized, full-service firm in Boston, Massachusetts. The firm provides sophisticated legal representation to local, national, and international public and private businesses, institutions, and individuals in a wide spectrum of industries. The firm's attorneys practice at the top level of the profession and consistently deliver successful results to clients through direct partner involvement, responsive client service, and practical and creative problem-solving.

The firm's interdisciplinary team of business, real estate, employment, regulatory, tax, and intellectual property attorneys possess years of experience and in-depth knowledge on issues facing business owners. We take the time to understand each client's unique needs and objectives, and our team of attorneys works closely to provide coordinated and comprehensive advice to meet each client's goals.

For more information, please contact an attorney in our [Cannabis Law](#) practice area: cannabislaw@davismalm.com.

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