

January 3, 2017
SPECIAL Medway Planning and Economic Development Board Meeting
155 Village Street
Medway, MA 02053

Members	Andy Rodenhiser	Bob Tucker	Tom Gay	Matt Hayes	Rich Di Iulio
Attendance	X	X	X	X	Absent with notice

ALSO PRESENT:

Susy Affleck-Childs, Planning and Economic Development Coordinator
Stephanie Mercandetti, Director of Community and Economic Development
Barbara Saint Andre, Town Counsel, KP Law

Chairman Rodenhiser called the meeting to order at 7:11 p.m. This meeting was held in conjunction with the Board of Selectmen. The purpose of the meeting was to discuss the recent legislation allowing recreational marijuana use.

The Board had been provided the following documents: (**See Attached**)

- The Regulation and Taxation of Marijuana Act: A Guide to the New Law Legalizing Recreational Use of Marijuana

Town Counsel Barbara Saint Andre presented information about some of the key elements.

- Legislation was amended last week and all deadlines were extended by 6 months.
- Some municipalities are enacting a moratorium in order to secure some additional time to address these matters.
- Communities can adopt reasonable restrictions
- If there is an area in a community that is already zoned for the cultivation of medical marijuana, the municipality cannot restrict it from being used for recreational cultivation.

Chairman Rodenhiser asked the Board of Selectmen for their input. What are their concerns? He noted that 54% of Medway voters in November approved recreational marijuana use.

Selectman Dennis Crowley noted that the vote reflected a general sense, but could not be used to assume that the community would want a retail outlet. He suggested a non-binding question be included with the ballot for the May 2017 election.

Town Counsel noted that the BOS would ultimately need to sponsor a binding vote at a Town Election if the design was to adopt a bylaw prohibiting any facility related to recreational marijuana.

PEDB Member Bob Tucker stated that the time length of any moratorium should be tied to a specific timetable such as “x” months after the State issues its regulations.

Town Administrator Michael Boynton indicated that the basic legislation is flawed. It was done as a citizens’ petition. The language was not well thought out and it needs to be fixed. There are

no provisions in the current legislation that address whether a municipality can establish a local licensing process.

It was noted that the # of marijuana establishments can be tied to the number of liquor licenses in a community.

BOS Chairman Trindade advocated for holding a non-binding vote at the May 2017 election.

PEDB chairman Rodenhiser suggested that it made more sense to put the moratorium in place first before taking any vote.

A question was raised as to how long a period a moratorium could include. Town Counsel Barbara Saint Andre referenced that the Attorney General's office had been comfortable approving town meeting votes for a 1 year moratorium when the medical marijuana legislation passed in 2013. The length of a moratorium cannot be arbitrary. It must be tied to having time to undertake a thoughtful discussion of issues. The moratorium would have to be language in the zoning bylaw.

BOS Member John Foresto indicated there was nothing to lose by going for a non-binding vote at the May election.

PEDB Chairman Rodenhiser stated that strong communication was going to be extremely important on this topic.

BOS Chairman Trindade indicated his interest in making sure the Town gets some tax money from such establishments.

Town Administrator Boynton stated there should definitely be a local review/license process.

PEDB Chairman Rodenhiser suggested that a local steering committee could be established to work on this matter.

Town Administrator Boynton and Assistant Town Administrator were asked to come back to a future BOS meeting with suggestions for next steps.

Adjournment

On a motion by Tom Gay and seconded by matt Hayes, the Board voted unanimously to adjourn the meeting.

The meeting was adjourned at 7:44 pm.

Respectfully Submitted,



Susan E. Affleck-Childs
Planning and Economic Development Coordinator

THE REGULATION AND TAXATION OF MARIJUANA ACT *A GUIDE TO THE NEW LAW LEGALIZING RECREATIONAL USE OF MARIJUANA*

On November 8, 2016, Massachusetts voters approved Question 4 legalizing the recreational use of marijuana. Implementation of the Act is generating significant questions at state and local levels. The Act contains inconsistencies and outright contradictions. In particular, questions and concerns have been raised regarding the timeline for implementation, enforcement, local control, regulation of marijuana products produced by personal growers, amount of the tax, and additional matters. It is not certain whether or when the General Court may address these issues. Responding to numerous questions from local officials, we have summarized the Act's provisions regarding the implementation timeline, personal use of marijuana, licensing of recreational marijuana establishments, local control mechanisms, and employment implications.

CURRENT TIMELINE

DECEMBER 15, 2016 Effective Date of Law/ Personal Recreational Growing and Use Allowed	“Personal use” of marijuana will be legal for a person at least 21 years old. General Laws c. 94G, §7 provides that individuals, but not businesses, will be permitted to engage in a range of activities as outlined below.
SEPTEMBER 15, 2017 Deadline for CCC to Adopt “Initial Regulations”	The Act creates a three-member Cannabis Control Commission (“CCC”) to be appointed by and under the jurisdiction of the State Treasurer. The CCC will regulate and issue licenses for recreational marijuana establishments, but not for medical marijuana establishments, regulated by the Department of Public Health.
OCTOBER 1, 2017 Applications Filed with CCC for Various Specific Licenses	The number of available licenses is limited and the filing of certain applications is staged over the course of the next three years.
JANUARY 1, 2018 Deadline for Final Regulations, or “Default”	If the CCC has <u>not</u> adopted regulations, “each medical marijuana treatment center” may begin to “possess, cultivate, or otherwise obtain marijuana and marijuana products and may deliver, sell or otherwise transfer” to anyone over the age of 21. If regulations <u>are</u> timely adopted, the CCC will issue licenses within 90 days after applications are received on or after October 1, 2017, to qualified establishments.

PERSONAL USE OF MARIJUANA

- The Act authorizes persons 21 years of age or older to possess, use, purchase, process or manufacture one ounce or less of marijuana, of which not more than five grams can be in the form of marijuana concentrate.
- Within a person's "primary residence", a person may possess up to 10 ounces of marijuana and any marijuana produced on the premises for personal use by not more than six marijuana plants. If there is more than one grower at the residence, there may be up to 12 plants cultivated on the premises.
- A person may give away or transfer without "remuneration" to a person age 21 years or older up to one ounce of marijuana, of which no more than five grams may be in the form of marijuana concentrate, provided that such transfer is not advertised or promoted to the "public".
- A person 21 years of age or older may also possess or manufacture marijuana accessories or sell such accessories to a person 21 years of age or older.

LOCAL CONTROL

The Act defines a "marijuana establishment" to include, "a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of marijuana-related business", and authorizes certain types of "local control".

Ordinances and Bylaws Regulating Time, Place and Manner

The Act provides that municipalities may adopt ordinances or bylaws regulating the time, place and manner of operations of marijuana establishments, provided that such ordinances or bylaws are not "unreasonably impracticable" and do not otherwise conflict with the Act. Standard practices for adoption of ordinances or bylaws will apply.

Further Regulation - Bylaws and Ordinances/Local Ballot Questions

The Act also authorizes imposition by "ordinance or bylaw by a vote of the voters of that city or town" of additional limitations on recreational marijuana establishments. The use of the phrase "by a vote of the voters of that city or town" typically requires a vote at an election, whereas the adoption of an ordinance or bylaw occurs by vote of the local legislative body (city or town council or town meeting). In our opinion, given this reference to voters, rules of statutory construction suggest that any attempt to approve an ordinance or bylaw, requires approval by the voters of the municipality at an election.

The topics that may be regulated under this section are as follows:

- prohibiting the operation of one or more types of marijuana establishments within the municipality;
- limiting the number of marijuana retailers to fewer than 20 per cent of the number of licenses issued within the municipality for the retail sale of alcoholic beverages not to be drunk on the premises where sold under chapter 138 of the General Laws; or
- limiting the number of any type of marijuana establishment to fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the town.

The reference to “one or more types of marijuana establishments”, in our opinion, can be read to allow a municipality to ban marijuana establishments within its borders. However, this language is subject to interpretation, and may be addressed in the CCC regulations.

Under the laws generally governing elections, no question may appear on the ballot unless specifically authorized by law. While the form of the question is typically included in the authorizing law, the Act does not do so. For your information, pursuant to G.L. c.54, §42C, the Board of Selectmen must vote to put the question on the ballot and provide notice to the Town Clerk no less than 35 days prior to the date of the election.

Petition for Question on State Ballot to Permit Marijuana “Cafés”

The Act provides that municipalities may, upon petition of not fewer than 10 percent of the number of the voters of the city or town voting at the state election preceding the filing of the petition, present to the voters of the city or town at the next state election the question of whether it will allow the consumption of marijuana and marijuana products on the premises where they are sold (i.e., so-called marijuana “cafés”). There is no timeline provided in the law for this type of petition, although it is reasonable to anticipate that any such request must be filed with the Secretary of the Commonwealth no later than the first Wednesday in August.

Regulation Prohibited or Strictly Limited

A municipality may not adopt an ordinance or bylaw prohibiting the transportation of marijuana or marijuana products or making such transportation “unreasonably impracticable”.

Similarly, a municipality may not adopt an ordinance or bylaw prohibiting an establishment that “cultivates, manufactures or sells marijuana products in any area in which a medical marijuana treatment center is registered to engage in the same type of activity”. [Emphasis added]. The Act contains no definition of “area”.

The Act provides that no agreement between a municipality and a marijuana establishment may contain a payment that is not “directly proportional and reasonably related” to the costs imposed on the municipality by the operation of the recreational marijuana establishment.

Zoning Moratoria

Municipalities have asked about the ability to adopt a zoning bylaw or ordinance establishing a moratorium on the locating of recreational marijuana establishments to allow time to study the issue and develop appropriate bylaws and ordinances. We expect the Attorney General will likely approve a moratorium for one year, consistent with those approved for medical marijuana and other moratoria. For municipalities with registered medical marijuana facilities, however, a moratorium may not be effective in preventing a recreational marijuana establishment “in any area” in which a medical marijuana treatment center is registered to engage in the same type of activity.

Municipalities may wish to start planning in anticipation of annual town meetings and spring and fall elections. Discussions might include whether or not to adopt ordinances or bylaws regulating time, place and manner issues, including moratoria, or to place questions before the voters relative to limitations on the type or number of recreational marijuana establishments that may be located in the municipality.

EMPLOYMENT ISSUES

The new law may also have significant implications for public employers. The relevant portion of the law provides, “This chapter shall not require an employer to permit or accommodate conduct otherwise allowed by this chapter in the workplace and shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees.”

Thus, despite the legalization in Massachusetts of the personal use of marijuana, public employers may continue to prohibit their employees from using or possessing marijuana in the workplace or in public buildings and from working while impaired by marijuana. Drug and alcohol testing and related policies should be reviewed to ensure that such policies will continue to be consistent with the public entity’s desired treatment of marijuana following the change in the law. In some cases, policies may need to be updated or clarified to account for the change in the law.

Be further aware, however, that federal law prohibiting the use of marijuana by employees who possess firearms, such as police officers, and those required to hold a Commercial Driver’s License, will continue to be in full force and effect notwithstanding the change in Massachusetts law. We are aware that some police chiefs are considering issuing a general reminder to all law enforcement personnel that marijuana is still a controlled substance for purposes of federal law and that the use or possession of marijuana is still prohibited.

Further Developments

We will continue to monitor developments in the law, including possible amendments by the General Court and guidance issued by the offices of the State Treasurer, Attorney General, or Secretary of the Commonwealth’s Elections Division.

In the meantime, if you have any questions concerning regulation of recreational marijuana, please contact Attorneys Joel Bard (jbard@k-plaw.com) or Katherine Laughman (klaughman@k-plaw.com) at 617-556-0007. Members of our Labor and Employment Practice Group are also available to assist with employment-related questions.

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