

Jennifer Tabakin
Town Manager

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TOWN OF GREAT BARRINGTON MASSACHUSETTS

OFFICE OF THE TOWN MANAGER

SELECTBOARD'S MEETING AGENDA

MONDAY, DECEMBER 11, 2017

7:00 PM – REGULAR SESSION

TOWN HALL, 334 MAIN STREET

ORDER OF AGENDA

7:00 PM - OPEN MEETING

1. CALL TO ORDER

2. APPROVAL OF MINUTES:

October 16, 2017 Regular Meeting.
October 30, 2017 Regular Meeting.

3. SELECTBOARD'S ANNOUNCEMENTS/STATEMENTS:

A. General Comments by the Board.

4. TOWN MANAGER'S REPORT:

A. Department Updates.

B. Project Updates.

5. LICENSES OR PERMITS:

A. Stephen Graham Jr./Graham Farmhouse, LLC for Three (3) One Day Beer and Wine Liquor Licenses for December 15, 16 and 17, 2017 from 5:00 pm – 7:00 pm on the 15th and from 10:00 am – 5:00 pm on the 16th at St. James Place, 352 Main Street. (Discussion/Vote)

B. Angela Barbieri/Angie's Place LLC d/b/a Risingdale Café for 2018 Annual Common Victualler License at 290 Park Street, Great Barrington. (Discussion/Vote)

6. NEW BUSINESS:

A. SB – Discussion of 2018 Meeting Calendar.

B. SB – Discussion of Local Zoning Regulations re: Recreational Marijuana Establishments.

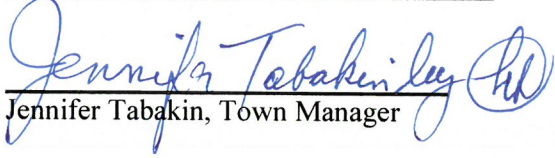
7. CITIZEN SPEAK TIME:

8. SELECTBOARD'S TIME:

9. MEDIA TIME:

10. ADJOURNMENT:

NEXT SELECTBOARD'S MEETING: Monday, December 18, 2017, 7:00 P.M.


Jennifer Tabakin, Town Manager

Pursuant to MGL. 7c. 30A sec. 20 (f), after notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium. At the beginning of the meeting, the chair shall inform other attendees of any such recordings. Any member of the public wishing to speak at the meeting must receive permission of the chair. The listings of agenda items are those reasonably anticipated by the chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.



Fee: \$25.00 (per day) **x3 =**
\$ 75.00

APPLICATION FOR ONE DAY LIQUOR LICENSE

TO THE LICENSING AUTHORITY:

The undersigned hereby applies for a License in accordance with the provisions relating thereto:

Applicant's Name: Stephen Graham Jr.

Organization Name: Graham Farmhouse, LLC

Applicant's Address: 8 Woodruff Rd., W. Stockbridge, MA 01266

Telephone Number: 518.522.8138

Type of License: ONE DAY BEER & WINE **x3** ONE DAY ALL ALCOHOLIC
(Circle one)

Event: Great Barrington Arts Market

Date: 12-15, 16, 17-17 Start Time: 5pm-15th End Time: 7pm-15th
10am-16+17 5pm-16+17

Event Address: St. James Place, 352 Main Street, Great Barrington, MA 01230

Is the Event on Town property? YES **NO**

PLEASE ATTACH THE FOLLOWING TO YOUR APPLICATION:

- OK** 1. TIPS or ServSafe Alcohol certification for anyone serving alcohol.
- OK** 2. Certificate of Insurance showing proof of Liquor Liability coverage.
(If the event is on Town property, the certificate must name the Town of Great Barrington as additional insured.)
- OK** 3. If the event is not on applicant's property, a letter of permission from the owner is required.

Liability: The below individual agrees to take responsibility for the above-noted event and further agrees to indemnify, save harmless, and defend the Town of Great Barrington, its officers, employees and agents, from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto, which may occur in connection with this event.

Caitlin Graham
Signature of Applicant

11.24.17
Date

FOR TOWN USE:

Approved _____

Denied _____

Postponed _____

New

**COMMONWEALTH OF MASSACHUSETTS
TOWN OF GREAT BARRINGTON
APPLICATION FOR 2018 ANNUAL COMMON VICTUALLER LICENSE**

FEE: \$25.00 *pd.* (Payable to the Town of Great Barrington) **DATE:** 11/30/17

NOTICE:

As provided by MGL Chapter 140, the sale of food for immediate consumption on the premises of the vendor has an intimate relation to the public health, and such activity cannot be conducted without the proper license and permit.

TO THE LICENSING AUTHORITY:

The undersigned hereby applies for a Common Victualler License in accordance with the provisions relating thereto:

OWNER(S) NAME: Angela

Barbieri

NAME OF BUSINESS: Angie's Place LLC

D/B/A (if applicable): Risingdale Cafe

MAILING ADDRESS: 135 West Ave Great Barrington MA 01230

BUSINESS TELEPHONE: 413-274-6185 CELL PHONE: 413-329-3967

EMAIL: angdbar@gmail.com

LOCATION WHERE LICENSE IS TO BE USED: 290 Park Street Great

Barrington MA 01230

DAYS OF OPERATION: Sunday-

Saturday

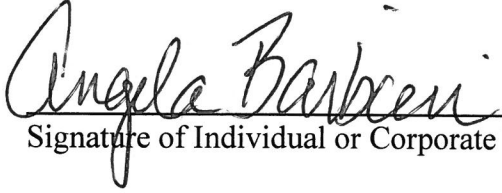
HOURS OF OPERATION: 11am-

1am

DESCRIPTION OF PREMISES: Bar area and dining room

OUTSIDE SEATING: deck with approximately 10 seats

Pursuant to M.G.L. Ch. 62C, Sec. 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required under law.


Signature of Individual or Corporate Name

By: _____
Corporate Officer (if applicable)

Selectboard's 2018 Regular Meeting Schedule

January 8	Second Monday
January 22	Fourth Monday
February 12	Second Monday
February 26	Fourth Monday
March 12	Second Monday
March 26	Fourth Monday
April 9	Second Monday
April 23	Fourth Monday
May 7	Annual Town Meeting
May 21	Third Monday
June 11	Second Monday
June 25	Fourth Monday
July 9	Second Monday
July 23	Fourth Monday
August 13	Second Monday
August 27	Fourth Monday
September 17	Third Monday
September 24	Fourth Monday
October 15	Third Monday
October 29	Fifth Monday
November 13	Second Tuesday
November 26	Fourth Monday
December 3	First Monday
December 17	Third Monday



TOWN OF GREAT BARRINGTON
MASSACHUSETTS

PLANNING BOARD

November 26, 2017

Great Barrington Selectboard

Re: Local Regulation of Recreational Marijuana Establishments

Dear Selectboard:

As you are no doubt aware, establishments for the retail sale of cannabis products may be in legal operation in Massachusetts within the next six months. Municipalities have the opportunity to regulate and tax these establishments, subject to the state law and final regulations which will be issued by the Cannabis Control Commission (CCC) in March 2018. Beginning in April 2018, the CCC will begin accepting applications for licenses for such establishments.

Some municipalities have passed zoning moratoria, in order to give them time to create local zoning laws that would strictly regulate these facilities. Great Barrington has not done so, nor does the Planning Board believe it should. Instead, the Planning Board believes that the industry should not be too strictly regulated, and the Town may benefit from loosening the regulations we anticipate the CCC to issue.

For example, it is likely the CCC will use regulations modeled on the Medical Marijuana Regulations promulgated several years ago, which required establishments to be not closer than 500 feet to places where children commonly congregate (such as schools and playgrounds, but not ice cream shops). Great Barrington Town Meeting voted to relax this distance requirement, and the Planning feels it should be similar with recreational establishments. Therefore, the Planning Board has written a draft zoning amendment to address concerns like this. The draft is attached to this letter.

We strongly request the Selectboard provide its input on this draft at its earliest possible meeting.

Also, since it has not done so already, we also strongly suggest the Selectboard formally discuss the other cannabis regulatory and licensing options that it can control, i.e. taxation, host agreements (existing and future) and number of facilities.

The Planning Board looks forward to hearing your comments so that we may continue our work in January. Thank you.

Sincerely,

Brandee Nelson, Chair

**Planning Board Draft Zoning Amendments, for Selectboard review and comment.
November 2017**

This draft zoning bylaw would amend the existing Medical Marijuana regulations, the definitions, and the table of use regulations, in order to regulate *both* medical and recreational marijuana establishments. While the Planning Board has reached a general consensus on this first draft, there are still items under discussion, as noted herein. Nevertheless, the Planning Board believes the best approach is to have a draft on the warrant for the 2018 Annual Town Meeting, so that the town may discuss, amend if necessary, and vote on zoning regulations.

7.18 REGISTERED MARIJUANA DISPENSARY ESTABLISHMENT

7.18.1 Purposes. To provide for the placement of Registered Marijuana Dispensaries (RMDs) and Marijuana retail establishments (collectively, Marijuana Establishments) in recognition of and accordance with the Humanitarian Medical Use of Marijuana Act, G.L. c.94C, and the implementing regulations, 105 CMR 725 G.L. c.94I, Medical Use Of Marijuana, and G.L. c.94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed, in suitable locations in Great Barrington, in order to minimize potential adverse impacts of ~~RMDs~~ Marijuana Establishments.

7.18.2 Definitions. Terms are defined in Section 11.

7.18.3 Site Plan Review Required. All proposed uses under this Section, including those that qualify for the agricultural use exemption under G.L. Ch. 40A, s.3, shall be subject to Planning Board Site Plan Review as set forth in Section 10.5.

7.18.4 Locational Requirements. ~~RMDs~~ Marijuana Establishments may be located in accordance with Section 3.1.4, Table of Use Regulations, except as follows:

1. No Marijuana Establishment ~~RMD~~ may be located closer than 200 feet from any school, daycare center, or other similar facility where minors may commonly congregate.
[The Planning Board expects the State regulations to use a default separation of 500 feet, but to allow municipalities to set a lesser distance by local option. Also, the Planning Board is still discussing the best language for this section, for example using only the word "school" since the language is relatively vague.]
2. The distance is to be measured in a straight line from the nearest point of the property line of the proposed Marijuana Establishment ~~RMD~~ and the nearest point of the property line of the protected uses stated above.
3. The Planning Board may, by special permit pursuant to Section 10.4, authorize a deviation from this distance requirement if it finds ~~specific circumstances or barriers adequately separate the Marijuana Establishment RMD and a protected use is not detrimental to a protected use. The burden shall be on the applicant to satisfy the Planning Board that these barriers are adequate to serve the purpose of this Section.~~

7.18.5 Physical Requirements. In addition to pertinent requirements of ~~105-CMR-725 implementing regulations of the Massachusetts Cannabis Control Commission, Marijuana Establishments RMDs~~ shall comply with the following:

1. All aspects of a Marijuana Establishment RMD relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials shall take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the business.

2. No outside storage of marijuana, related supplies, or educational materials is permitted.

7.18.6 Use Regulations. In addition to pertinent requirements of implementing regulations of the Massachusetts Cannabis Control Commission ~~105-CMR-725~~, Marijuana Establishments RMDs shall comply with the following:

1. Uses under this Section may only consist of the uses and activities permitted by its definition as limited by state law, and may not include other businesses or services in the same building.

[The Planning Board will discuss this further, since not allowing a mixed-use facility would eliminate the possibility of a downtown establishment.]

2. No marijuana shall be smoked, eaten or otherwise consumed or ingested on the premises, except as permitted by implementing regulations of the Massachusetts Cannabis Control Commission ~~105-CMR-725.000~~.

3. The hours of operations for sales, delivery and dispensing purposes, ~~and that the facility is open to qualifying patients,~~ shall be between the hours of 8:00 AM and 8:00 PM, ~~Monday through Saturday.~~

4. The agricultural component of a ~~an RMD~~ Registered Marijuana Dispensary (RMD) operation may be allowed in any zone on lots of five acres or more, or two acres or more if the sale of products produced from the agricultural use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars, pursuant to the agricultural use exemption under G.L. Ch. 40A, s.3. The dispensing of ~~medical~~ marijuana, however, is permitted only in locations specified in the Table of Use Regulations.

[The Planning Board will discuss this further, since this existing language could allow an industrial greenhouse facility of potentially large scale in district if the lot is of adequate size.]

5. Additional regulations may be imposed as Site Plan Review or Special Permit conditions.

7.18.7 Submittal Requirements. Above and beyond the standard application for Site Plan Review, an application under this section shall include the following:

1. Copies of all required Marijuana Establishment RMD registrations issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the facility;

2. Evidence that the applicant has site control and the right to use the site for a facility in the form of a deed, valid lease, or purchase and sale agreement, and a signed statement from the property owner;

3. In addition to what is normally required in a site plan pursuant to Section 10.5, details showing all signage, exterior proposed security measures for the premises, including lighting, fencing, gates and alarms, etc. ensuring the safety of employees and patrons and to protect the premises from theft or other criminal activity.

7.18.8 Discontinuance of Use

1. Any Marijuana Establishment RMD permitted under this section shall be required to remove all material, plants, equipment and other paraphernalia in compliance with ~~405 CMR 725~~ implementing regulations of the Cannabis Control Commission prior to expiration of ~~its~~ its DPH Registration operating permit issued by the Commonwealth of Massachusetts or immediately following revocation or voiding of ~~its DPH Registration~~ such permit.

DEFINITIONS

MEDICAL MARIJUANA TREATMENT CENTER (MMTC): See Registered Marijuana Dispensary.

REGISTERED MARIJUANA DISPENSARY (RMD): A use operated by a not-for-profit entity registered, approved, and regulated by the Massachusetts Department of Public Health in accordance with ~~405 CMR 725.000~~ in accordance with the implementation regulations of the Massachusetts Cannabis Control Commission, and pursuant to all other applicable state laws and regulations, to be known as a Registered Marijuana Dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers.

MARIJUANA ESTABLISHMENT: Either an RMD or a retail marijuana establishment that is registered, approved and regulated in accordance with the implementation regulations of the Massachusetts Cannabis Control Commission and pursuant to all other applicable state and local laws and regulations.

See next page for Table of Use Regulations

Excerpt. Table of Use Regulations, showing proposed changes to existing table

Permitted Use	ZONING DISTRICT															
	R1A	R1B	R2	R3	R4	B	HVC	B1	B2	B2A	B3	MXD	I	I2		
-13 Motels or overnight cabins	N	N	N	N	N	SB	SB	N	SB	N	SB	SB	SB	SB	SB	See also 7.10
-14 Motor vehicle fuel station	N	N	N	N	N	SB	SB	N	SB	N	N	SB	SB	SB	SB	See also 7.8
-15 Motor vehicle general and body repair	N	N	N	N	N	SB	SB	N	SB	N	N	SB	SB	SB		
-16 Motor vehicle sales rooms, including used car lots	N	N	N	N	N	SB	SB	N	SB	N	N	SB	SB	SB		
-17 Offices	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
-18 Parking lots, commercial	N	N	N	N	N	SB	SB	N	SB	N	SB	SB	SB	SB	SB	
-19 Personal service establishment	N	N	N	N	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	
-20 Professional offices	SB	SB	SB	SB	SB	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	See also 7.14
-21 Registered Marijuana Dispensary Establishment	N	N	N	N	N	N Y	N Y	N	Y	N Y	Y	N Y	Y	Y	Y	See also 7.18
-22 Restaurants and other places for serving food, other than fast-food eating establishments	N	N	N	N	N	Y	SB 4	SB	SB	SB	SB	SB	SB	SB	SB	See also 7.3
-23 Retail stores or centers and/or wholesale sales and service with total aggregate floor area less than or equal to 20,000 square feet	N	N	N	N	N	Y	Y 5	Y	Y	SB	Y	Y 5	Y	Y	Y	See also 7.3
-24 Retail stores and shops for custom work or making of articles sold on the premises	N	N	N	N	N	Y	Y	SB	Y	SB	Y	Y	Y	Y	Y	

KP | LAW

The Leader in Public Sector Law

AN ACT TO ENSURE SAFE ACCESS TO MARIJUANA *A GUIDE TO THE REVISED LAW LEGALIZING RECREATIONAL USE OF MARIJUANA*

AUGUST 2017

On the November 2016 state election ballot, Massachusetts voters approved Question 4 to allow the non-medical (hereinafter “recreational”) use of marijuana by adults in the Commonwealth (Chapter 334 of the Acts of 2016, entitled, “The Regulation and Taxation of Marijuana Act”). We issued a guide to the new law in January, 2017. On July 28, 2017, Governor Baker signed the General Court’s revised law on the subject, “An Act to Ensure Safe Access to Marijuana” (the “Act”), adopted as Chapter 55 of the Acts of 2017.

The Act makes numerous changes to the laws that were approved by the voters. The most significant changes from the municipal perspective involve the licensing process, the optional local tax surcharge, and amendments to the optional local restrictions or prohibitions that may be considered. Additionally, the Act will soon repeal Chapter 369 of the Acts of 2012, entitled “An Act for the Humanitarian Medical Use of Marijuana,” and move the statutory requirements for the limited cultivation, distribution, possession and use of marijuana for medical purposes into a new G.L. c.94I. This guide will summarize the key points.

CURRENT TIMELINE

AUGUST 1, 2017 Cannabis Advisory Board	Appointment of a 25-member Cannabis Advisory Board, with members appointed by a variety of officials and organizations, charged with making recommendations on guidelines, rules, and regulations for the recreational use of marijuana. The President (or a designee) of the Massachusetts Municipal Association shall hold one seat.
SEPTEMBER 1, 2017 Cannabis Control Commission	Appointment of a five-member Cannabis Control Commission (“CCC”), by the Governor, Attorney General and Treasurer. The CCC will have authority to adopt regulations and issue licenses for commercial production and sale of marijuana, much like the Alcoholic Beverages Control Commission for alcohol. The CCC shall also assume authority over the licensing of medical marijuana treatment centers, which will be transferred from the Department of Public Health before December 31, 2018.
MARCH 15, 2018 CCC Adoption of Regulations	Adoption of regulations, guidelines and protocols by the CCC for the issuance of licenses for recreational marijuana establishments. The CCC must additionally make necessary accommodations and promulgate special regulations for the counties of Dukes and Nantucket by May 1, 2018.

<p>April 1, 2018</p> <p>License Applications Begin</p>	<p>Acceptance of applications by the CCC for recreational marijuana licenses pursuant to G.L. c.94G will begin not later than April 1.</p> <p>IMPORTANT: The CCC will be governed by the zoning bylaws or ordinances <u>in effect at the time of application</u>. Municipalities must inform the CCC of any bylaw or ordinance that would make the applicant noncompliant if the license is issued.</p>
<p>June 1, 2018</p> <p>License Issuance</p>	<p>The CCC may begin issuing licenses, prioritizing applications under statutory criteria. The CCC must approve or deny applications within 90 days.</p>

ZONING MORATORIA

The emerging area of marijuana regulation presents many policy and planning issues for municipalities. A zoning moratorium, which would impose a temporary limit on the ability of applicants to locate marijuana establishments within a municipality, is a powerful tool available to municipalities to provide additional time to consider how a community will regulate marijuana uses.

Many municipalities have already adopted a zoning moratorium on locating a recreational marijuana facility. In light of the revisions to Chapter 94G, it appears that the Attorney General will continue to approve such moratoria for towns. We recommend that municipalities not seek to impose a moratorium beyond December 31, 2018. A moratorium may be important if a municipality is considering seeking a prohibition or other limitation but may not be able to have the bylaw or ordinance in place before April 1, 2018. A sample zoning moratorium is attached.

LOCAL REGULATION UNDER G.L. c.94G, §3

Municipalities may regulate the time, place and manner of marijuana establishment operations and may adopt ordinances and bylaws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not “unreasonably impracticable.” Ordinances and bylaws may also restrict licensed cultivation, processing and manufacturing of marijuana that is a “public nuisance,” establish restrictions on public signs related to marijuana establishments and establish a civil penalty for violation of an ordinance or bylaw.

Municipalities seeking to prohibit or otherwise limit the number or types of marijuana establishments within a community must follow the method revised by the General Court to impose such limitations.

Prohibitions or Limitations Permitted by Bylaws or Ordinances

Pursuant to G.L. c.94G, §3, a municipality may prohibit or limit recreational marijuana establishments by bylaw or ordinance with respect to the following:

- prohibit the operation of one or more types of marijuana establishments;

GB has limit of 5 package store licenses: 20% of 5 = 1

- limit the number of marijuana retailers to fewer than 20 per cent of the number of retail off-premises alcoholic beverage licenses issued under G.L. c.138 by the municipality; or
- limit 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 municipality.

The procedure for adopting a bylaw or ordinance to prohibit or limit the number of recreational marijuana establishments has significantly changed.

- If a municipality voted in *favor* of Question 4 on November 8, 2016 [i.e., a majority of voters casting ballots voted “yes” on the question], then two votes must be taken before an ordinance or bylaw can be effective – (1) it must be approved by the voters by ballot at an annual or special election, and (2) the ordinance or bylaw must be approved by the local legislative body.
- If a municipality voted *against* Question 4, a ballot question is not required and the ordinance or bylaw may be adopted by the local legislative body. This special provision will expire on December 31, 2019, after which the two-step process requiring a ballot question and legislative approval will apply to all municipalities.

Chapter 94G, §3 now provides the general form for a ballot question. The question must include the entire proposed bylaw or ordinance and also directs that the City Solicitor/Town Counsel prepare a brief summary that makes clear the number and types of marijuana establishments that will be permitted to operate. As with all ballot questions, pursuant to G.L. c.54, §42C, a City or Town Clerk must receive notice of the ballot question, with the full legislation text and counsel summary, no less than 35 days prior to the date of the election. Sample ballot questions are attached.

Additional Issues to Consider When Imposing Prohibitions or Limitations

The Act is silent on several issues concerning the adoption of local legislation. These issues include:

Zoning v. General Legislation: The language in the Act is ambiguous with respect to whether a bylaw or ordinance implementing a prohibition or limitation must be zoning or general in nature. We recommend that a municipality consider adopting both a general and a zoning bylaw or ordinance to prohibit or limit recreational marijuana establishments. A general bylaw or ordinance may serve to protect the Town from zoning issues such as zoning freezes and “grandfathering” of existing uses. A lower quantum of vote is also required to pass a general bylaw. The Attorney General has already approved zoning bylaws imposing prohibitions and limitations on recreational marijuana establishments. The Attorney General has also approved a similar general bylaw, but recommended that the town adopt a zoning bylaw as well. This is an evolving issue that will also involve different policy considerations. Samples of bylaw/ordinance language are attached.

Agreement of Bylaw or Ordinance Language with Ballot Question: For municipalities subject to the two-step approval process for implementing a prohibition or limitation, it is important that the bylaw or ordinance approved by ballot be the same or substantially similar as that approved by the local legislative body in order to avoid any challenge to its validity.

Conversion of Existing Marijuana Treatment Centers

The prior law required a city or town to allow a recreational marijuana establishment to be located in “any area in which a medical marijuana treatment center is registered to engage in the same type of activity.” The new Act rescinded that requirement, but added a new requirement prohibiting a zoning bylaw or ordinance from preventing a medical marijuana establishment, licensed by the Commonwealth on or before July 1, 2017, from converting to a recreational marijuana establishment “engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment engaged in the same type of activity.” It is important to note, however, that such a conversion may be prohibited if the municipality has adopted a total prohibition of all recreational marijuana establishments by ordinance or bylaw.

Petition for Ballot Question to Permit Marijuana “Cafés”

The procedure for allowing consumption on the premises where marijuana is sold remains unchanged from the previous legislation. A petition, which must be signed by at least 10% of the registered voters, is the only mechanism to put this question on a ballot, and it can only appear on a ballot for the biennial state election, the next of which will be held in November 2018.

Marijuana Growing and Cultivation

As our previous memorandum indicated, Chapter 351 of the Acts of 2016 amended the Zoning Act, G.L. c.40A, §3, to provide that the “growing, cultivation, distribution or dispensation of marijuana” does not qualify for the agricultural exemption under the Zoning Act. The new Act expressly adds, however, that municipalities are not precluded “from establishing zoning bylaws or ordinances which allow commercial marijuana growing and cultivation on land used for commercial agriculture, aquaculture, floriculture, or horticulture.”

HOST COMMUNITY AGREEMENTS

The Host Community Agreement (HCA) provision in G.L. c.94G, §3 was substantially revised to cover both recreational and medical marijuana establishments. The Act now requires that recreational marijuana establishments and medical marijuana treatment centers enter into such agreements with host communities. The Act authorizes a “reasonable” community impact fee but caps it at no more than 3% of the establishment’s gross sales and limits the terms of the agreement to no more than five years. The Act does not preclude renegotiation of a HCA at the end of the initial five-year term. The Act continues to require that a host community agreement only include community impact fees that are “reasonably related” to the costs imposed upon the municipality by the operation of the marijuana establishment. The municipality is required to document its costs.

TAXATION ON SALE OF RECREATIONAL MARIJUANA

The Act increases the amount of local tax that municipalities may impose on the “sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the city or town” to 3% of the total sales price, an increase from 2%.

- If a municipality wishes to adopt the local sales tax, it must accept G.L. c.64N, §3 by a vote of its Town Meeting, Town Council, or the approval of a City Council and Mayor. If a municipality has already accepted §3, a new vote of the legislative body will be required in order to increase a sales tax rate between 2% – 3%.
- This local tax does not apply to sales of marijuana or marijuana product between marijuana establishments.

The Act, at G.L. c.64N, §2, increased the amount of state tax on sales of recreational marijuana from the original 3.75% up to 10.75%.

CHANGES TO MEDICAL MARIJUANA LAWS

The Act makes a number of significant changes to the regulation of medical-use marijuana including the following:

- The eventual repeal of chapter 369 of the Acts of 2012, “An Act for the Humanitarian Medical Use of Marijuana.”
- The adoption of a new Chapter 94I – “Medical Use of Marijuana.”
- The transfer of the oversight and regulation of medical-use marijuana to the Cannabis Control Commission.
- The continuation of the Department of Public Health regulating medical-use marijuana in the short-term under its existing regulatory scheme, 105 CMR 725, until the transfer of oversight and regulation is complete. This transfer must occur on or before December 31, 2018.

We will address these changes in more depth in a separate update.

PERSONAL USE OF RECREATIONAL MARIJUANA

The following personal use of recreational marijuana is permitted under the Act:

- Persons 21 years of age or older may possess two ounces or less of marijuana. G.L. c94C, §32L.
- 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.

The following are significant limitations imposed on personal use of recreational marijuana under the Act:

- Cultivation and processing marijuana plants may not be visible from a public place.
- Marijuana or marijuana products exceeding 1 ounce within the person's place of residence must be secured by a lock.
- No person shall consume marijuana in a public place or smoke marijuana where smoking tobacco is prohibited. The term "public place" is not defined in the Act but is generally understood to include areas both privately and publicly owned to which the public have rights of access by invitation, either express or implied.
- Open containers of marijuana or marijuana products are prohibited in the passenger area of any motor vehicle.

FURTHER DEVELOPMENTS

We shall continue to monitor developments in this changing area of the law, particularly as the proposed regulations of the CCC are made public.

In the meantime, if you have any questions concerning regulation or recreational marijuana, please contact Attorneys Joel Bard (jbard@k-plaw.com), Katherine Laughman (klaughman@k-plaw.com), or Brian Riley (briley@k-plaw.com) at 617.556.0007. Members of our Labor and Employment Practice Group are also available to assist with employment-related questions.