

Testimony on Bills Regarding Social Consumption and Host Community Agreements
Monday, July 29, 2019, 10:00am, State House Room A-2

Submitted by:
Shaleen Title, Commissioner
Massachusetts Cannabis Control Commission
101 Federal Street 13th Floor
Boston, MA 02110

Dear Chair Chang-Diaz, Chair Rogers, and members of the Joint Committee on Cannabis Policy:

I am writing in support of S. 1125 and H. 3541, to allow municipalities to participate in the social consumption pilot program, in support of S. 1126 and H. 3536, to ensure fairness and consistency for cannabis businesses seeking local approval, and in opposition to H. 3598, which allows municipalities to demand additional payments from businesses beyond the 3% local tax without justification.

Support of S. 1125 and H. 3541

Along with Chairman Hoffman, I spent several months working collaboratively with a group of municipal officials with wide-ranging expertise from across the Commonwealth to examine concerns and create a framework for a social consumption pilot program. This would allow patients and consumers, especially those who cannot consume cannabis in their homes, to access a regulated environment where on-site consumption would be permitted.

Some of the key issues discussed by the committee include preventing underage access, preventing impaired driving, a strong focus on staff training to detect impairment and minimize overserving, ensuring consumers are adequately educated to minimize overconsumption, and ensuring that employees are protected from secondhand smoke.

Our group's memo is attached. The Commission voted to include social consumption regulations in its draft regulations published July 2, 2019. As noted in the working group's memo and in the Commission meeting minutes, no part of the pilot program will be able to move forward unless a legislative change is made to clarify how municipalities may permit on-site consumption.

Support of S. 1126 and H. 3536

On January 10, 2019, the Commission voted to seek statutory authorization to review and regulate host community agreements. S. 1126 would address this. From my perspective as commissioner appointed for expertise in social justice, the lack of enforcement of the legal limitations of host community agreements is a major barrier to entry for small businesses.

Specifically, Section 3(d) of M. G. L. c. 94G requires that the community impact fee must be limited to 3% of the gross annual sales of the establishment and a term of 5 years, and the fee must be reasonably related to the costs imposed upon the municipality by the business operating there. However, real-world conditions since the enactment of Chapter 94G have created an

environment in which some municipalities are requiring “voluntary” contributions and “gifts” above those limits.

Unfortunately, these additional payments are not in fact voluntary, as the applicants who cannot afford them are turned away by the municipalities and therefore unable to apply for a state license. In an industry in which traditional banking and loans are not available, this further favors the well-capitalized and well-resourced. H. 3536 would address this.

Opposition to H. 3598

A community impact fee is optional and separate from the local tax. It is meant to compensate the municipality for any actual and anticipated “reasonably related” expenses resulting from the operation of the business. Such expenses could include, for example, traffic or environmental impact studies, public safety personnel overtime costs where higher congestion or crowds are anticipated, or municipal inspection costs.

Removing the requirement to justify the community impact fee as “reasonably related” to the costs imposed upon the municipality would change the fee to simply become a revenue generator for municipalities. It would exclude the businesses who couldn’t afford it from participating in the industry.

Conclusion

Thank you for the opportunity to provide this testimony in support of discretion for municipalities to decide whether they would like to participate in the social consumption pilot program, and in support of businesses to be treated fairly with respect to the community impact fees they pay. Please don’t hesitate to contact me if I can provide any additional information.

May 10, 2019

Dear Mr. Collins,

For your consideration, our working group has collaboratively established a framework for a pilot program regulating establishments allowing on-site consumption of cannabis.

It is important to note that no part of this program will be able to move forward unless a legislative change is made to allow municipalities to permit on-site consumption, as explained in the Legislative Authority section below.

Process and Timeline

In addition to our own wide-ranging expertise as local and state officials from throughout the Commonwealth, to create this framework we examined recent feedback from experts including the Cannabis Advisory Board, the Massachusetts Municipal Association Policy Committee on Municipal and Regional Administration, as well as the Commission's Director of Research, Director of Licensing, and Chief of Investigations and Enforcement.

We also examined concerns previously expressed by commissioners and consulted with other officials in our communities and other communities as appropriate. Additionally, we examined relevant regulations in other states and municipalities that license businesses allowing on-site consumption of cannabis, including Alaska's regulations 3 AAC 306.370 which went into effect April 11, 2019.

Recommendation

In summary, our recommendation is for the Commission to implement a pilot program licensing **primary use social consumption establishments** (cannabis cafes) and **event host licenses** (events open to the public). The program will be open to a maximum of twelve municipalities, each of which may implement its own cap on each type of license. The twelve municipalities will consist of the five communities in the working group, if they choose to participate, and other municipalities who choose to participate in the pilot program. If more than twelve municipalities wish to participate, the Commission will select communities based on socioeconomic, size, and geographic diversity.

The primary attributes of the pilot program are: a limited number of participating communities; licenses for groups that have thus far been locked out of the legal cannabis industry; stringent application and operational requirements; a strong focus on staff training; and robust data collection by both businesses and state and local regulators.

Key Issues

Preventing underage access. No one under 21 may access the premises of an on-site consumption establishment. If permitted by local regulation, municipalities may allow outdoor event hosts to designate an area for on-site consumption. All licensees must have an adequate plan to ensure that no one under 21 will be allowed into an on-site consumption area.

Impairment detection by server. The pilot program requires each employee of a social consumption establishment to complete the Responsible Server Training Program in addition to general required agent training. The mandatory training includes impairment-related topics such as potency, effects, absorption time, and procedures to ensure that customers are not overserved.

Serving sizes. Generally, retail purchase limits apply, but customers who are purchasing edibles may not purchase more than a reasonable portion intended for a single use (defined as 2.5 mg – 20 mg of THC) at each point of sale. Consistent with existing retail packaging, edible marijuana products in a solid form must be easily and permanently scored to identify 5-mg individual servings.

To ensure customers purchasing edibles are informed, they must receive and verbally acknowledge an understanding of a consumer information card educating customers about the potential length of impairment from edibles. Consumer education will also be made available through signage.

Consumption of marijuana products not purchased on site will not be permitted, and no “take-out” options will be available. Staff will monitor consumers for compliance.

Impaired driving. Every pilot program participant will need to submit procedural and operational plans demonstrating a diligent effort to assist customers who may be impaired in finding means of transportation. To ensure such requirements are tailored to the region in which the establishment is located, our recommendation is that the plans be reviewed by both the Commission and the municipality in which the on-site consumption will take place.

Our group supports additional legislative efforts to address detection of impaired drivers.

Smoking and vaping. Our group examined regulations from the other states that allow social consumption, specifically California and Alaska, and recommends that Massachusetts rules on smoking be as restrictive as possible by prohibiting the smoking of cannabis indoors. Smoking may be permitted outdoors, away from open doors, windows or ventilation systems, if an examination by local authorities demonstrates that smoking is compatible with uses in the surrounding community. This approach was recommended by Harvard H.T. Chan School of Public Health faculty members Dr. Vaughan Rees and Dr. Andy Tan of the Center for Global Tobacco Control and Dana-Farber Cancer Institute, respectively.

Furthermore, our group recommends adopting a modified form of the rules governing smoking from Alaska and applying them to non-smoking forms of consumption involving heat, such as vaping. This requires licensees to have a ventilation system that directs air from the consumption area to the outside of the building through a filtration system sufficient to remove visible vapor, consistent with all applicable building codes and ordinances, and adequate to eliminate odor at the property line. It also requires a separate smoke-free, vapor-free area for employees to monitor the consumption area. In sum, our group suggests that smoking, defined as combustion, is only permitted outdoors, and vaping or other non-smoking forms of consumption involving heat are permitted indoors with adequate ventilation.

Understanding that municipalities have taken a variety of approaches to regulate vaping, including that many current ordinances or regulations prohibit indoor vaping, some cities or towns may wish to participate in the pilot program by only allowing for outdoor events.

Legislative Authority

Marijuana establishments are licensed by the Commission. Under G. L. c. 94G, § 4(b)(1), the Commission has the authority to license “the consumption of marijuana or marijuana products on the premises where sold.” G. L. c. 94G, § 3(b) outlines a process for voters in a city or town to authorize “the sale of marijuana and marijuana products for consumption on the premises where sold.”

However, as interpreted by the Secretary of the Commonwealth, G. L. c. 94G, § 3(b) does not provide a mechanism for that process. Fortunately, multiple bills such as H3541 and S1125 have been filed to correct this issue and allow cities and towns to permit marijuana establishments to allow on-site consumption. **This pilot program will only be able to move forward if one of those bills passes.**

Licensing

A primary goal of the pilot program is to promote and encourage the groups that have thus far been unable to meaningfully participate in the legal cannabis industry, despite the requirement for the Commission to ensure such participation in § 77(a) of Chapter 55 of the Acts of 2017.

In accordance with the Commission vote passed February 2018, the Cannabis Advisory Board recommendation passed February 2019, and parallel to the Commission vote on delivery April 26, social consumption licenses will be initially limited to equity program participants and economic empowerment applicants. Our recommendation is to re-evaluate the pilot program, including this exclusivity, after 24 months.

As the Commission explores the ability to create a preliminary evaluation process for other licenses as part of its Equity Work Plan, the proposed pilot program would implement such a precertification process on a limited scale.

There are six steps to the process, each of which are part of the existing licensing process for other marijuana establishments:

- 1) The first step, Commission precertification, consists of the Application of Intent, Background Check, and the Management and Operations Profile, including new requirements specific to social consumption.
- 2) The second step consists of local approval as required under G. L. c. 94G, § 3, including noise mitigation plans, odor mitigation plans, and an examination of any outdoor smoking provisions,
- 3) The third step entails a Commission review of compliance with requirements for a location and a legal interest in the property, documentation of capital, and confirmation of a host community agreement and compliance with local laws. The rationale for

moving these items to a later step is to allow for precertification to be used in obtaining capital, location, and a host community agreement.

- 4) The fourth step consists of final inspections as determined by Commission staff.
- 5) The fifth step is a final license issued by the Commission.
- 6) After Commission staff has conducted an inspection to ensure that the inventory has been accurately entered into METRC tracking system and that other conditions of the final license, if any, have been met, Commission staff will issue an order allowing for the commencement of operations.

Data Collection

A pilot program provides an opportunity to closely monitor any unforeseen challenges and ensure that adequate resources are available and agencies are well-prepared for any issues that may come up in wider implementation. In that spirit, a cornerstone of this pilot program is the robust collection and analysis of data in multiple areas, to be designed and overseen by the Commission's Research department.

The Commission and each municipality and business that participates in the pilot program will agree to collect data to be anonymized, aggregated, and shared with the public. Specifically, pilot program participants will collect data on items including but not limited to: product sales, serving sizes, staff turnover rate, and municipal data including costs, crime, and any incidents or complaints.

Sincerely,

Social Consumption Working Group

Thomas Bernard, Mayor, North Adams

Alisa Brewer, Councilor, Amherst

Helen Caulton-Harris, Commissioner of the Division of Health and Human Services, Springfield

Michael Fenton, Councilor, Springfield

David Gardner, Assistant Town Manager, Provincetown

Steven Hoffman, Chairman, Cannabis Control Commission

Doug Kress, Director of Health & Human Services, Somerville

Alex Mello, Planner, Somerville

Shaleen Title, Commissioner, Cannabis Control Commission