

MAHBB

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February 14, 2018

Chairman Steven Hoffman and
Members of the Cannabis Control Commission
101 Federal Street, 13th Floor
Boston, MA 02110

**RE: 935 CMR 500.000 Adult Use of Marijuana – Proposed Regulations
Testimony of Cheryl Sbarra, J.D., Director of Law and Policy
North Shore Community College, Danvers, MA**

Thank you for the opportunity to provide testimony on behalf of the Massachusetts Association of Health Boards (MAHB) relative to the above-entitled proposed regulations of Adult-Use Marijuana. Thank you also for the work the Commission is doing to implement General Law Chapter 94G: Regulation of the Use and Distribution of Marijuana Not Medically Prescribed (the Act). The following is a summary of the questions and concerns of MAHB relative to the above-entitled proposed regulations.

1. Conflict between proposed regulation and the actual law

The Act states as follows: “No person shall consume marijuana in a public place or smoke marijuana where smoking tobacco is prohibited. . . This subsection shall not apply to a person who consumes marijuana or marijuana products in a designated area of a marijuana establishment located in a city or town that has voted to allow consumption on the premises where sold . . .” (G.L. Ch. 94C, §13(c)).

The process for voting to permit consumption is found in §3(b): “The city council of a city and the board of selectmen of a town shall, upon the filing with the city or town clerk of a petition (i) signed by not fewer than 10 percent of the number of voters of such city or town voting at the state election preceding the filing of the petition and (ii) conforming to the provisions of the General Laws relating to initiative petitions at the municipal level, request that the question of whether to allow, in such city or town, the sale of marijuana and marijuana products for consumption on the premises where sold be submitted to the voters of such city or town at the next biennial state election. **If a majority of the votes cast in the city or town are not in favor of allowing the consumption of marijuana or marijuana products on the premises where sold, such city or town shall be taken to have not authorized the consumption of marijuana and marijuana products on the premises where sold.**” (emphasis added).

The proposed regulations appear to authorize social consumption without the requirement of local approval through petition. (935 CMR 500.145). **It is our understanding that the Commission will be clarifying that social consumption will not be permitted unless there is local approval as the legislation describes. MAHB encourages the Commission to do so.**

2. **The social consumption sections of the proposed regulation conflict with the Smoke Free Workplace Law, G.L. 270, § 22 (SWL)**

The SWL prohibits smoking in virtually all enclosed workplaces in the Commonwealth. In addition, many cities and towns have further restricted smoking in all enclosed workplaces, including smoking bars (cigar and hookah bars) and private clubs. Smoking is defined in the SWL and in all local laws as “the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or **non-tobacco product designed to be combusted or inhaled.**” (emphasis added). This means that “smoking” or “inhaling” cannabis is prohibited in virtually all enclosed workplaces pursuant to the SWL; and it is completely prohibited in many municipalities by a stricter local law.

A “primary social consumption establishment” pursuant to the proposed regulation is an establishment “licensed to purchase or otherwise acquire marijuana from licensed marijuana establishments and sell single servings of marijuana to consumers for consumption or use on the premises.” These social consumption establishments would not fall into the “smoking bar” exemption to the SWL because, in order to become a “smoking bar” the establishment must occupy an enclosed indoor space that primarily is engaged in the retail sale of tobacco products for consumption by customers and derives revenue from the sale of other products that is incidental to the sale of tobacco; maintains a valid local tobacco sales permit and maintains a valid permit from the Department of Revenue.

In addition, the proposed “Omnibus” tobacco bill (HB 4109) was recently reported out of Committee with a favorable recommendation. This bill would add a prohibition of vaping to the SWL. This means that vaping cannabis would also be illegal.

As written, the proposed regulation’s sections on social consumption establishments would violate the current SWL and the proposed amendment to the SWL unless consumption is limited to edible products.

3. **Local Control**

935 CMR 500.170 states that a marijuana establishment “shall comply with all local rules, regulations, ordinances, and bylaws.” However, other sections of the regulation make it less clear that boards of health have the authority to impose reasonable local public health safeguards through health regulations. Many sections of the regulation address local town bylaws and local city council ordinances. For instance, the Application for Intent package requires an applicant to demonstrate that the marijuana establishment will be compliant with “local codes, ordinances and bylaws” but does not mention board of health regulations. Does this include regulations?

The regulations require that an applicant must be compliant with zoning ordinances and bylaws in existence at the time of the application. It is unclear whether this includes other ordinance, bylaws and regulations. MAHB assumes that this requirement only applies to zoning ordinances and bylaws and does not apply to other ordinances, bylaws and regulations. Clarification would be appreciated. **MAHB asks that the**

Commission clarify in its regulation that boards of health may enact regulations after an applicant submits the Application for Intent package and the applicant will have to comply with these regulations.

4. Conflict between “drug paraphernalia” and “marijuana accessories”

The definition of drug paraphernalia contained in G.L. ch. 94C, §1 includes many products that are used to ingest or otherwise introduce marijuana into the human body. However, the regulation distinguishes between drug paraphernalia and marijuana accessories. **MAHB asks the Commission to limit the sale of marijuana accessories to marijuana establishments and to adult-only retail tobacco establishments.**

5. Local enforcement

The regulation includes a Cannabis Control Commission “secret shopper program” to assure that establishments are not selling marijuana to individuals under the minimum legal sales age. However, there is no provision permitting local enforcement of the regulation. Experience in tobacco control enforcement demonstrates that local compliance checks and inspection checks are effective enforcement strategies. MAHB is concerned that without local “boots on the ground” enforcement will not be as robust as we would all like it to be. A local enforcement compliance check program that works in collaboration with the Commission’s program would be welcomed by MAHB.

References to compliance with 105 CMR 300.000 and 105 CMR 500.000 trigger local board of health inspections and involvement to assure compliance with these state codes. **MAHB asks that the Commission include in its regulation the authority to conduct local compliance checks to assure that persons under the minimum legal sales age are not able to purchase marijuana.**

6. Storefront marijuana retailers

While entry into storefront marijuana retailers is limited to those who are 21 or who possess a medical marijuana card, it is unclear whether these retailers will be permitted to sell other products unrelated to marijuana. Will these stores look like convenience stores or like adult-only tobacco retail stores? Adult-only retail tobacco stores are defined as stores that do not permit anyone under the minimum legal sales age to enter and in which the sale of other products is merely incidental. **MAHB asks that the Commission limit the sale of other products in marijuana establishments to those products that are merely incidental, as is done in adult-only retail tobacco stores.**

7. Required transportation plan

Transportation plans for patrons are required for primary use social consumption establishments, however plans are not required for mixed use social consumption establishments. MAHB is unclear what the rationale is for this distinction. **MAHB asks that the Commission include the requirement that mixed use social consumption establishment have transportation plans for their patrons.**

Thank you for your consideration of these matters; and if you have any questions or need any additional information, please do not hesitate to contact me.

Respectfully submitted,

Cheryl Sbarra, J.D.
Director of Policy and Law
on behalf of the Massachusetts Association of Health Boards and
on behalf of the Coalition of Local Public Health