



City of Waltham

Jeannette A. McCarthy
Mayor

CITY OF WALTHAM
CITY CLERK'S OFFICE

2017 JUL 27 A 11:29

RECORDED

July 27, 2017

TO: The City Council
RE: Marijuana Bill

Dear Councillors:

Enclosed please find information that I have received from MMA regarding the marijuana bill. Also enclosed is the Waltham's municipal vote on question 4.

I know the City Council is working on it, but as you know there are some key provisions that may impact cities including Waltham.

Sincerely,

Jeannette A. McCarthy

JAM/ccb

Enclosure

cc: Law Department



Published on *Massachusetts Municipal Association* (<https://www.mma.org>)

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Conference committee still negotiating on marijuana bill ^[1]

July 14, 2017

After a long series of public hearings and internal meetings over the spring and early summer, the Joint Committee on Marijuana Policy was unable to reach agreement on a single piece of legislation to make reforms to the recreational marijuana law that was passed by voters last November.

Instead, House and Senate members of the committee produced two very different bills, which were quickly passed by each chamber in June. The two bills now sit in a six-member House-Senate conference committee that is having difficulty working out the substantial differences.

The two major areas of disagreement between the bills are the tax rate and the method of local control.

The House bill would set a total tax rate on recreational marijuana products of 28 percent, while the Senate bill retains the original rate of 12 percent (3.75 percent on marijuana sales in addition to the state's 6.25 percent sales tax, plus a local-option tax of up to 2 percent).

The 12 percent rate would be among the lowest in the nation, with only Maine being lower at 10 percent. The House rate would put Massachusetts in the middle of eight states that have legalized recreational marijuana, and below several "first-wave" states such as Washington and Colorado, which tax at 37 percent and more than 25 percent, respectively.

Regarding local control, the House bill would allow cities and towns to opt out by a vote of the local legislative body, while the Senate bill maintains language from the original ballot question, which requires cities and towns to pass a ballot question at a regular municipal election in order to ban recreational marijuana businesses or to set the number at less than 20 percent of the number of liquor store permits in the community.

Under the law approved in November, cities and towns are deemed to have accepted the law unless there is a local vote. The MMA has urged the Legislature to grant cities and towns the ability to opt out via a vote of the local legislative body – town meeting in towns, or city or town council, with the approval of the mayor, in city forms of government.

The MMA argues that the process in the House bill is consistent with the full and open process used at the local level for all major decisions. In a town, opting out would require an affirmative vote of the board of selectman *and* town meeting, a process that is clear in the legislation. For the 259 towns with an open town meeting, *all* registered voters are welcome to participate in the legislative body. For the 36 towns with representative town meeting, the legislative body includes approximately 150 to 250 residents who have been elected on a precinct basis. In cities, these decisions would be made by locally elected representatives of the people, who are directly accountable to voters.

The local control issue has been the subject of numerous misconceptions during the course of the debate, with media outlets repeatedly – and inaccurately – reporting that, under the House bill, a board of selectmen could ban marijuana in towns. These decisions clearly would *not* be made by only a handful of people, as has been asserted by the originators of Question 4, the ballot question that legalized recreational marijuana.

News accounts also fail to point out that it is the state, not cities and towns, that will be awarding licenses to businesses to grow, test, manufacture or sell marijuana products for recreational use, thereby limiting the extent to which communities may act and the timeframe within which to do so. Once licenses have been granted, they may not be rescinded.

Media outlets have also reported that there has been a rush by cities and towns to “opt out” of the law, while the MMA’s analysis shows that only about 30 cities and towns have voted to opt out, with the majority being cities and towns where voters rejected Question 4.

About 80 cities and towns have taken a measured approach to the new law and adopted a local moratorium. This gives local officials the time to take the pulse of residents on zoning and siting issues and to come back later with recommendations. A moratorium is also intended to give cities and towns adequate time to review the Legislature’s expected changes to the law and the regulations that will follow.

The stated intent of the 2016 marijuana act was to “normalize” the marijuana industry; yet virtually no other industry is able to bypass the local decision-making bodies when seeking approval to locate in a city or town. The law in its original form makes it impossible for city councils or town meetings to make these zoning decisions, as they are able to do with any other business.

Under Massachusetts law, however, decisions on zoning and commercial activity are inherent in the duties of town meetings, town councils and city councils. The MMA argues that the language of the ballot question creates a unique exception in the law to allow the commercial marijuana industry to circumvent the municipal decision-making process that shapes all other business activity.

Under the recreational marijuana law in its current form, personal use of marijuana and home growth became legal last Dec. 15. On Dec. 30, 2016, the Legislature enacted a six-month delay for the other deadlines in Question 4, which means the governor is now required to appoint a new Cannabis Advisory Board by Aug. 1, and the treasurer is required to appoint a Cannabis Control Commission by Sept. 1.

The CCC’s deadline for promulgating regulations is March 15, 2018, and the commission is due to begin accepting applications by April 1, 2018 (before most towns will hold their spring town meetings).

If the CCC has not promulgated regulations by June 1, 2018, then existing medical marijuana dispensaries will be authorized to sell recreational marijuana without a regulatory structure in place. It is unclear whether the law preempts any community host agreement that prohibits a registered marijuana dispensary from selling recreational marijuana.

The marijuana conference committee is comprised of House majority leader Ron Mariano; Rep. Mark Cusack, House chair of the Joint Committee on Marijuana Policy; Rep. Hannah Kane, a member of the Joint Committee on Marijuana Policy; Sen. Patricia Jehlen, Senate chair of the Joint Committee on Marijuana Policy; Sen. William Brownsberger, and Sen. Richard Ross.

The committee did not meet its self-imposed deadline of June 30 to pass a bill, in order to give the state a year to get regulations and the regulatory structure in place before retail sales begin next July. As *The Beacon* went to press, the committee was still working to come to an agreement on a

compromise bill.

Written by MMA Legislative Analyst David Lakeman

Source URL: <https://www.mma.org/conference-committee-still-negotiating-marijuana-bill>

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Summer 2017

Final marijuana law rewrite changes tax rates, opt-out process

By David Lakeman

Late on July 17, the conference committee charged with hashing out differences between recreational marijuana bills that had been passed by the House and Senate released a final bill that is expected to be passed by both chambers.

The committee had initially set a deadline of June 30 to finish its work.

The language of the final bill (H. 3818) and the delay in finishing it reflected the deep divisions between the House and the Senate on how best to regulate the new industry, which was legalized through passage of a ballot question in last November's statewide election.

Local control

The new bill sets up an unusual two-tiered system for opting out – banning businesses that either sell, grow, manufacture or test recreational marijuana products – based on how a community voted on the ballot question in November.

Communities where voters rejected Question 4 may ban recreational marijuana businesses through their standard ordinance or bylaw process until Dec. 31, 2019. This process will apply to the 91 communities where Question 4 did not pass – about one-quarter of the municipalities in the Commonwealth.

In communities where Question 4 passed, the municipal government must prepare an ordinance or bylaw, which must then be reviewed and summarized by municipal counsel. Following this review, the question – by a vote of the board of selectmen or by the city or town council with the approval of the mayor – must be placed on the ballot at a regular or special municipal election.

The new law does provide language for the ballot question, as suggested by the MMA. (The language and procedure set forth in the new law can be found in Section 27 of H. 3818.)

After Dec. 31, 2019, this ballot requirement will apply to every city and town.

The House bill would have allowed cities and towns to opt out by a vote of the local legislative body, a process that was strongly supported by the MMA. The MMA argued that the process in the House bill was consistent with the full and open process used at the local level for all major decisions.

“Unfortunately, we believe that the conference committee’s compromise version will be very challenging for a large number of communities because the local referendum process is out of

sync with the timing of local elections and zoning bylaws,” said MMA Executive Director Geoff Beckwith in a statement. “And while it is good that 91 cities and towns will have a workable process, it is unfortunate and disappointing that the remaining 260 communities will face ongoing problems that will make it very hard to implement the law smoothly.”

The MMA’s analysis shows that about 30 cities and towns have voted to ban recreational marijuana businesses, with the majority being cities and towns where voters rejected Question 4.

About 80 cities and towns have adopted a local moratorium in order to have time to take the pulse of residents on zoning and siting issues and come back later with recommendations. Moratoriums were also intended to give cities and towns adequate time to review the expected changes to the law and the regulations that will follow.

Tax rate

The new law also makes changes to the tax rates found in the original ballot question.

The law approved in November set the state tax rate at 10 percent (a 3.75 percent marijuana excise tax plus the state sales tax of 6.25 percent), plus a local option tax of up to 2 percent, for a maximum of 12 percent.

The new law increases the marijuana excise to 10.75 percent and increases the local option tax cap to 3 percent, for a new total rate of up to 20 percent.

The new law also creates a more confining structure for communities entering into host community agreements, requiring that they be renegotiated every five years and limiting community impact fees paid to the municipality by the licensee to 3 percent of the establishment’s gross sales.

Regulatory structure

The new law maintains broad elements of changes made by both the House and Senate to the ballot law’s Cannabis Control Commission and Cannabis Advisory Board.

The CCC, charged with direct oversight over the new industry, will expand from three members to five. The governor, attorney general and treasurer will each appoint one commissioner, and the other two will be chosen by a majority vote of the three state officials.

The law also expands the CAB to 25 members, with a seat added for the MMA as well as social justice and patient groups. The CAB, which will make recommendations on regulating cannabis, will need to be appointed by Aug. 1.

Governance of both recreational and medical marijuana will be consolidated under the same regulatory authority.

The CCC is charged with “promulgating regulations, guidelines and protocols necessary for the issuance of licenses” no later than March 15, 2018, and to begin accepting license applications by April 1, 2018.

The conference committee included some criminal justice reforms in the rewritten law. Several possessory offenses that remained criminal under the original ballot measure are reclassified as civil. And individuals with prior convictions for possession can have those records sealed.

The law also raises the noncriminal threshold for personal possession outside the home from one ounce to two.

The compromise bill also strengthens penalties for underage possession and use of marijuana, and places limits on advertising.

H. 3818 is scheduled for concurrent votes in the House and Senate. With both House and Senate leadership having signed off on the compromise measure, and with no amendments allowed, passage is virtually assured.

To view the text of the bill, visit tinyurl.com/MassMarijuanaCompromise.

Town Name: 0308 WALTHAM

Question 1

PET. N: EXPANDED GAMING (LAW)

Yes	9534	No	15815	Blank	1380	Total	26729
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Question 2

PET. P: ALLOW FAIR ACCESS TO PUBLIC CHARTER SCHOOLS (LAW)

Yes	8947	No	17046	Blank	736	Total	26729
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Question 3

PET. O: PREVENT CRUELTY TO ANIMALS (LAW)

Yes	19332	No	6642	Blank	755	Total	26729
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Question 4

PET. D: REGULATION AND TAXATION OF MARIJUANA (LAW)

Yes	14382	No	11870	Blank	477	Total	26729
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