

# RECREATIONAL MARIJUANA LAW



BERKSHIRE REGIONAL PLANNING COMMISSION

(REVISED JULY 24, 2018)

# LOCAL REGULATION OPTIONS

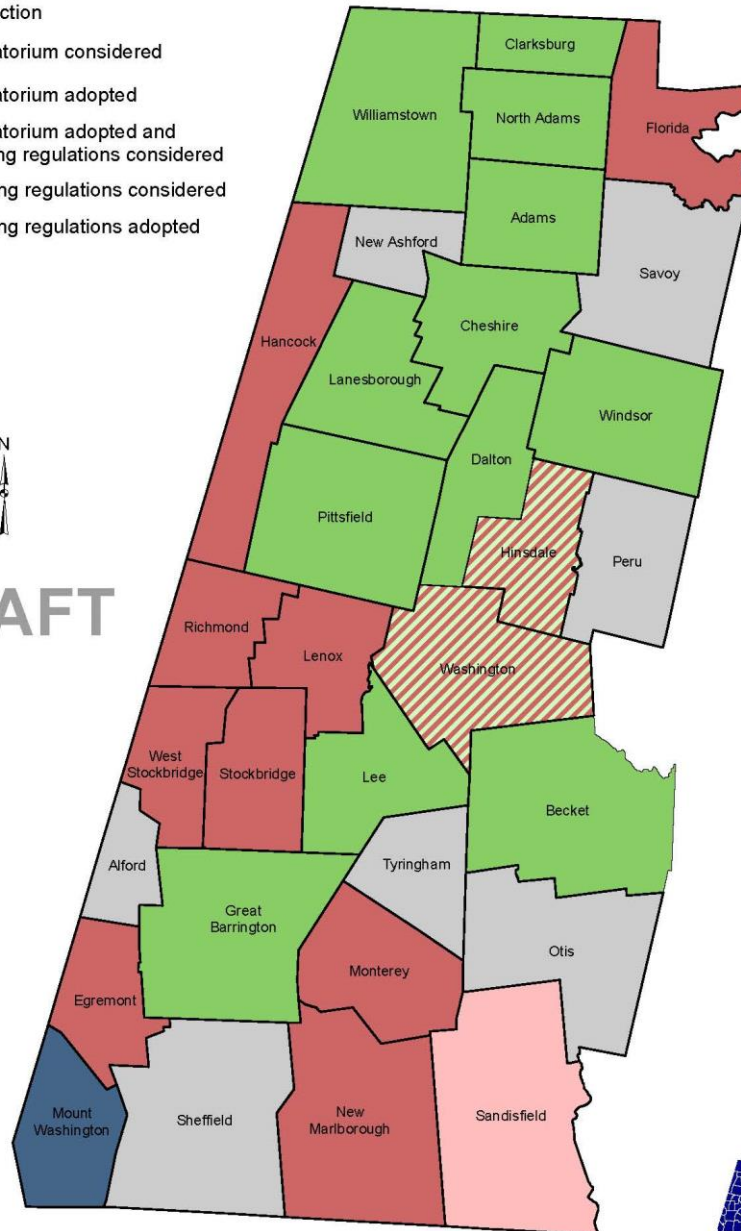
---

- Every Town and City in Berkshire County voted yes on Question 4 (to approve recreational marijuana)
- City or Town can take the following actions:
  - Adopt a **local ordinance** to regulate marijuana (and collect 3% Excise Tax and/or a 3% Impact Fee on retail establishments)
  - Adopt a **moratorium** – can last no longer than December 31, 2018 (although an exception seems to have been made for New Marlborough)
  - **Take no action**, and let state law govern
  - **Attempt to ban** marijuana by a 2/3 majority vote at a Town Meeting or City Council AND a majority vote at the ballot at the next election. (This has only been done by Mount Washington)

## Status of Community Action on Recreational Marijuana Law

- No action
- Moratorium considered
- Moratorium adopted
- Moratorium adopted and zoning regulations considered
- Zoning regulations considered
- Zoning regulations adopted
- Ban

N  
DRAFT



July 5, 2018

# STATE RESPONSIBILITIES

---

- The State (CCC) is in charge of most of the enforcement and permitting
- Sets basic guidelines/laws for all towns & cities to follow
- Issues licenses
- Performs background checks
- Collects fees and issues fines
- Performs surprise inspections
- The State will ask the applicant for proof of local compliance before issuing license



# STATE REGULATIONS

## (935 CMR 500.000)

---

FINALIZED ON MARCH 9, 2018



# USES ASSOCIATED WITH MARIJUANA

---

- GROWING
- PROCESSING
- MANUFACTURING
- PACKAGING
- TESTING
- RESEARCHING
- TRANSPORTING
- SELLING

# THE 8 TYPES OF MARIJUANA ESTABLISHMENT LICENSES (EACH TYPE CAN ALLOW MULTIPLE *USES*)

---

1. **CULTIVATION** (CULTIVATE, PROCESS, PACKAGE)
2. **CRAFT COOPERATIVE** (CULTIVATE & MANUFACTURE IN SEVERAL LOCATIONS)
3. **MANUFACTURER** (MANUFACTURE, PROCESS, PACKAGE)
4. **RETAILER** (SELL)
5. **RESEARCH** (CULTIVATE, RESEARCH)
6. **TESTING** (TESTING ONLY)
7. **TRANSPORTER** (TRANSPORT ONLY)
8. **MICRO-BUSINESS** (CULTIVATE, MANUFACTURE; ON A SMALL-SCALE <5,000 SF)

# CULTIVATION

---

- **Cultivate, Process, Package only**
- Can move between Tiers with approval of the State
- Tiers 1-11 (based on square footage)
  - Tier 1: up to 5,000 SF
  - Tier 11: 91,000 SF to 100,000 SF



# CRAFT CO-OPERATIVE

---

- **Cultivate and Manufacture only**
- Can have unlimited locations for cultivation and up to 3 locations for manufacturers
- The co-op would then sell it, wholesale, to a retailer

# MANUFACTURER

---

- **Manufacture, Process and Package only**

# RETAILOR

---

- **Sell Only**
- Only as a storefront for now (Cafés and home delivery has been put on hold for now)
- This is the only license that allows selling to consumers
- ID's are checked at the door of the store

# RESEARCH

---

- **Cultivation and Research only**
- Draft regulations allow on-site consumption for “testing”, including on humans
- As such, on-site consumption seems to be permitted, which would be the only license that allows this



# TESTING

---

- **Testing only** (composition and potency)
- These licensee holders may not hold a different class of license, to avoid any conflict of interest

# TRANSPORTER

---

- **Transport only**
- Presumably between all of the other establishments

# MICRO-BUSINESS

---

- **Cultivate, Manufacture and deliver**
- Small-scale, so Tier 1 only (so no greater than 5,000 SF)
- Such a license gets a break on the State license fees

# LOCAL REGULATION OPTIONS

---

IN GENERAL- REGULATE BY TIME, PLACE AND MANNER



# LOCAL REGULATION OPTIONS CONT.

---

## Regulating by PLACE:

- By zone district
- By marijuana overlay district, for certain types of uses (manufacturing in Area A, retail in Area B)
- By setbacks from schools, daycares, homes, etc. The State has a 500' setback requirement from schools, but Local regulations can decrease or waive this requirement (but not go greater than 500')

# LOCAL REGULATION OPTIONS CONT.

---

- May require a Special Permit for the establishment, usually granted by the Planning Board, although the ZBA or Select Board may also be the granting authority
- May (should) require a site plan, usually in tandem with the Special Permit
- Language to prohibit outdoor storage
- Language to prohibit outdoor visibility of activities
- Can set hours of operation
- Can prohibit marijuana establishments from selling alcohol

# LOCAL REGULATION OPTIONS CONT.

---

- Lighting requirements
- Landscaping requirements
- Parking requirements
- Prohibit Drive-throughs, if desired
- Fencing requirements
- Signage (although this seems to conflict with US Supreme Court case Reed v. Gilbert)
- Require a security plan (although the State already requires one)
- Outdoor waste (requiring waste be kept indoors)

# LOCAL REGULATION OPTIONS CONT.

---

- Can require a traffic study
- Can require annual inspections by the City/Town, although the State will inspect
- Municipalities are required to create a host community agreement, but may choose whether to implement an “impact fee”, as long as it is “directly proportional and reasonably related to the costs imposed upon the town by the operation of the establishment”. This impact fee may only be applied to retail establishments, and may not exceed 3% of their gross sales. The impact fee is separate from the Excise Tax.



# LOCAL LIMITATIONS

---



# LOCAL LIMITATIONS CONT.

---

- Local regulations CANNOT unreasonably regulate – in other words make it nearly impossible for establishments to open if the town/city voted yes on Question 4.
- Can't limit the number of marijuana retail establishments to less than 20% of the number of package liquor licenses in the town/city (without town meeting & election ballot). But the town/city could place a cap on the total number of non-retail establishments, as long as it's greater than one).
- Can't prohibit a certain type of establishment (no manufacturing buildings for example)
- Can't prohibit any existing MEDICAL pot facility from becoming a recreational one

# MEDICAL MARIJUANA (RMD, REGISTERED MARIJUANA DISPENSARY)

---

- IF THE TOWN/CITY DOES NOT ALREADY HAVE LANGUAGE THAT ADDRESSES THE MEDICAL MARIJUANA LAW OF 2012, MAY WANT TO CREATE REGULATIONS FOR THIS AS WELL AND COMBINE IT WITH RECREATIONAL MARIJUANA. COULD BE SAME BYLAW OR SEPARATE.
- CANNOT PROHIBIT RMD'S, EVEN THROUGH TOWN MEETING + ELECTION
- CANNOT LIMIT THE NUMBER TO LESS THAN ONE
- CAN STILL REGULATE LOCATION, SETBACKS, NUMBER, ETC.

THROUGH FUNDING PROVIDED THROUGH THE  
DISTRICT LOCAL TECHNICAL ASSISTANCE PROGRAM,  
BRPC IS ABLE TO ASSIST COMMUNITIES WITH BYLAWS

---

CHRISTOPHER GRUBA, SENIOR PLANNER

[CGRUBA@BERKSHIREPLANNING.ORG](mailto:CGRUBA@BERKSHIREPLANNING.ORG)

413-442-1521 X 12