

Massachusetts Cannabis Law Resource and Information Guide

2022 EDITION



DAVIS MALM
ATTORNEYS

MASSACHUSETTS CANNABIS LAW RESOURCES AND INFORMATION GUIDE

IN THIS GUIDE

- 2 **Statutes and Regulations**
- 9 **License Application Process**
- 11 **Post-Licensing Requirements**
- 12 **Municipal Requirements**
- 14 **State Offices and Agencies**
- 16 **Key Decisions on Municipal Regulation of Cannabis**
- 19 **About Davis Malm**

This guide is intended for use as a resource by business owners and operators, financial experts, investors and service providers who operate—or are planning to operate—in the expanding and evolving medical- and adult-use marijuana marketplaces. In addition, the guide provides information about and links to key cannabis industry laws and people in the Commonwealth of Massachusetts and beyond.

The terms marijuana and cannabis are used interchangeably throughout this guide.

The cultivation, distribution, sale, possession and use of marijuana or marijuana-based products are illegal under federal law, even where a state law permits such activities. Compliance with state law does not assure compliance with federal law. Any information in this publication or on our website is not intended to provide any assistance in violating federal law.

STATUTES AND REGULATIONS

Massachusetts Medical-Use Cannabis Laws

In November 2012, Massachusetts voters passed The Act for the Humanitarian Medical Use of Marijuana, which became effective on January 1, 2013. Regulations issued by the Massachusetts Department of Public Health (DPH), effective on May 24, 2013, helped define procedures to register qualifying patients, personal caregivers, registered marijuana dispensaries—including cultivation and manufacturing under a single license (collectively, RMDs)—and RMD agents. As of year-end 2018, the Massachusetts Cannabis Control Commission (CCC) assumed control over DPH medical cannabis duties, including promulgating new CCC rules that substantially adopted existing regulations.

Massachusetts Adult-Use Cannabis Laws

In November 2016, Massachusetts voters passed The Regulation and Taxation of Marijuana Act (the Ballot Question). Under this law, effective as of December 2016, adults may possess and use marijuana in limited quantities, with retail facilities permitted following the development of a licensing scheme.

On July 28, 2017, Governor Charlie Baker signed new legislation, the Act to Ensure Safe Access to Marijuana (the Act), which revised the guidelines included in the November 2016 voter referendum and established new governing principles for the regulation of adult-use marijuana. In summary, the Act:

- provides cities and towns the ability to ban or limit the development of adult-use marijuana establishments and to address municipal concerns, where appropriate;
- establishes a five-member CCC to regulate both the adult-use and, as of year-end 2018, medical marijuana industries;
- establishes a 25-member Cannabis Advisory Board with five appointees each from the Governor, Treasurer and Attorney General, and ten appointees who are to be *ex officio* appointees, with expertise and knowledge relevant to the Board's mission; and
- establishes requirements that the CCC set potency limits for edible marijuana products and adopt packaging requirements that conform to a detailed list of health and safety protections.

STATUTES AND REGULATIONS CONTINUED

Massachusetts Adult-Use Cannabis Laws *Continued*

In August 2022, Governor Baker signed into law all but one section of S3096 An Act Relative to Equity in the Cannabis Industry (2022 Act). The 2022 Act established a supplemental grant and low-interest loan funding mechanism for businesses qualifying under the CCC's social equity and economic empowerment programs as well as making a variety of changes to legal requirements in place since the passage of the Act in 2017, including the following:

- confirming the costs potentially chargeable to cannabis licensees subject to the three percent (3%) state law cap;
- expressly granting the CCC authority to review Host Community Agreements (HCAs) between municipalities and cannabis applicants;
- extending the potential HCA payment period from five years to eight years;
- requiring municipalities to furnish documentation of costs being attributed to cannabis licensees as a required condition for requesting HCA payments from the licensee;
- establishing a process for municipalities to authorize social consumption establishments (so-called cannabis cafes); and
- reversing the former application of U.S. tax code Section 280E for Massachusetts state tax purposes that had previously substantially limited the ability of Massachusetts cannabis ventures to claim ordinary business deductions on state tax returns.

Massachusetts Regulations

State regulations for medical- and adult-use operations can be found at 935 CMR 501 et seq. and 935 CMR 500 et seq., respectively, and are available [here](#) and [here](#).

The regulations for medical-only operations were revised in January 2021 and again on May 5, 2021. As of April 2022, 94 medical dispensaries were in operation, with 39 additional proposed facilities having provisional license status and 5 having final license status.

Revised adult-use regulations went into effect on January 8, 2021, and were further revised, with minor modifications, on May 5, 2021 (Revised Regulations). The Revised Regulations describe the licensing procedures and operational rules for:

STATUTES AND REGULATIONS CONTINUED

Massachusetts Regulations *Continued*

- retail establishments;
- cultivation facilities;
- manufacturing facilities;
- transportation companies;
- microbusiness ventures;
- craft cooperatives;
- social consumption establishments;
- marijuana courier companies
- delivery operator license;
- delivery endorsements;
- testing laboratories;
- research facilities; and
- individual agents employed by such establishments.

New provisions in the Revised Regulations expanded the delivery regulations by establishing two different adult-use delivery license types:

1. The prior “Delivery-Only” license was renamed to “Marijuana Courier;” and
2. The “Delivery Operator” license.

The new Delivery Operator license authorizes the licensee to purchase wholesale and warehouse cannabis products from cultivators and product manufacturers and then deliver the products directly to consumers at prices set by the Delivery Operator. The delivery licensees may hold up to three retail licenses and up to a combined total of two Marijuana Courier or Delivery Operator licenses. For these license types, there is a three-year exclusivity period for economic empowerment and social equity applicants. This period begins on the date when the first Delivery Operator commences operations (which has recently occurred in early April 2022 for Clovercraft, LLC d/b/a Budzee of Easthampton and KindRun Massachusetts, LLC of Hudson MA).

In accordance with express requirements in the 2022 Act, the CCC will need to promulgate new or amended regulations to implement provisions in the 2022 Act not later than by July 2023.

STATUTES AND REGULATIONS CONTINUED

Massachusetts Regulations *Continued*

The CCC began reviewing license applications in Spring 2018, giving priority to existing licensed medical operators and those qualifying and certified as economic empowerment applicants. Additional license categories became eligible for priority treatment in November 2019. As a result, the first provisional adult-use licenses issued in September 2018, followed in Fall 2018 by the first final licenses and certificates permitting commencement of operations by adult-use licensees.

On November 20, 2018, the first two recreational marijuana stores opened for business in Massachusetts. As of April 7, 2022, a little under three-and-a-half years later, there are approximately 200 operational adult-use marijuana retailers, and these stores have made over \$2.85 billion in gross retail and delivery sales. Sales in 2021 alone totaled over \$1 billion.

In February 2020, the CCC issued a final license to the first economic empowerment applicant in Massachusetts.

As of April 2022, the CCC has issued approximately 950 licenses (provisional, final or operating certificate), the majority of which are for adult-use retail, cultivation and manufacturing. Of these licensees, 380 have commenced operations in the Commonwealth, including ten independent testing laboratories, over 200 adult-use retail stores, 80 cultivators and over 60 product manufacturers.



Statutes & Regulations

Below is a timeline of key dates relative to Massachusetts medical-use and adult-use cannabis laws and industry activity.

2012

November: MA voters pass **The Act for the Humanitarian Medical Use of Marijuana**.

2013

January: **The Act for the Humanitarian Medical Use of Marijuana** becomes effective.

May: Regulations issued by the DPH become effective.

2018

December: The CCC assumes control over DPH **medical cannabis duties**, including promulgating new CCC rules that substantially adopted existing regulations.

2019

November: Regulations for **medical-only operations** revised.

2020

March: **Medical-use** stores deemed essential and remain open during COVID-19 emergency.

2021

January: Revised **medical-use** regulations take effect.

May: Minor revisions to **medical-use** regulations take effect.

Spring: CCC launches revamped website, incorporating **medical-** and **adult-use** cannabis content on one platform with new features.

2016

November: MA voters pass **The Regulation and Taxation of Marijuana Act**.

December: Possession and use of **recreational marijuana** allowed in limited quantities.

2017

July: Governor Baker signs **The Act to Ensure Safe Access to Marijuana**, revising guidelines in voter referendum and establishing new governing principles for regulating **adult-use marijuana**.

August: 25-member **Cannabis Advisory Board** established.

September: **Cannabis Control Commission (CCC)** established.

2018

April: Priority certification applications open for **adult-use marijuana establishment licenses**.

June: CCC launches **social equity program**.

November: First **adult-use retail** stores open in MA.

2019

June: CCC approves draft regulations providing framework for cannabis cafes and delivery services.

November: Revised **adult-use** regulations in effect.

2020

March: CCC issues Cease and Desist Order, closing all **adult-use** retail stores indefinitely due to the COVID-19 emergency.

May: CCC allows conditional reopening of adult-use facilities, subject to implementation of specified safeguards to protect against COVID-19 exposure.

2021

January: Revised **adult-use** regulations take effect.

May: Minor revisions to **adult-use** regulations take effect.

935 CMR 502 regulations relative to co-located medical- and **adult-use** operations repealed. CCC deploys additional and updated public documents.

July: CCC reports \$25.1 million in CCC receipts collected for fiscal year 2021 (\$1.2 million from fines and \$23.8 million from licensing and agent fees).

July: **Massachusetts Department of Revenue** reports tax revenue collected from marijuana sales: \$64 million from sales tax and \$112.3 million from excise tax.

2022

August: Governor Baker signs "**An Act Relative to Equity in the Cannabis Industry**" that changes provisions applicable to adult use establishments in place since the predecessor 2017 Act.

STATUTES AND REGULATIONS CONTINUED

Municipal Zoning/Bylaws Regulations

Municipalities may not ban medicinal cannabis dispensaries but may enact zoning regulations affecting medical-use facilities. For example: Boston Amendment No. 393 (August 16, 2013) and Amendment No. 387 (January 26, 2013).

Municipalities may also enact regulations affecting adult-use facilities. In particular, municipalities may ban or limit adult-use facilities, provided they comply with applicable procedural requirements in the Act.

In cities or towns where the majority of voters voted “Yes” on the 2016 Ballot Question, voters must be polled before adult-use facilities can be banned. Cities or towns in which the majority of voters voted “No” may ban adult-use facilities without a municipality-wide vote.

Cities or towns that permit adult-use sales may limit the number of marijuana retailers to not fewer than 20% of the number of retail liquor licenses issued (not including licenses issued to restaurants or bars). As of January 2020, approximately 100 cities and towns have banned cannabis completely, and numerous other municipalities have enacted municipal limits. Litigation is underway regarding the processes to ban or limit cannabis, including whether bans or limitations must be enacted via zoning (which typically requires a two-thirds majority) rather than a simple majority vote of any authorized city or town body. Based on early court cases, any municipality that enacts cannabis restrictions via zoning must pass a prohibition vote in compliance with two-thirds majority zoning requirements rather than a simple majority.

A variety of municipal, zoning and siting court cases have arisen since medical-use cannabis started and, in particular, since the start of adult-use cannabis. A summary of several key recent cases is appended at the back of this guide.

The CCC website includes the [municipal zoning tracking page](#) to help license applicants, cities and towns, and the public identify the status of adult-use cannabis and related zoning policies.

Cannabis operations have been the subject of significant municipal siting, permitting and zoning litigation. Some of the key cases are summarized on page 16.

STATUTES AND REGULATIONS CONTINUED

Tax Rates

Tax rates under the adult-use marijuana regulations* are as follows:

Adult-use	Medical-use
10.75% excise tax on top of the normal 6.25% sales tax on retail and wholesale sales payable to the state monthly to support the costs of regulating the industry and fund initiatives in public health, public safety, police training, restorative justice and workforce development.	Untaxed
Optional 3% local sales tax on retail sales only payable to state and then periodically transmitted back to the city or town)	Untaxed
Optional host community agreement payments (up to 3% of gross sales)	Not applicable

*not including payments to municipalities pursuant to a Host Community Agreement (HCA)

Federal Law

Notwithstanding state law authorization and ongoing efforts to enact reform-oriented federal legislation, cannabis use and possession remain federally prohibited by Chapter 13 of the Controlled Substances Act, 21 USC §§ 801 et seq. Please see the disclaimer referenced earlier in this guide.

LICENSE APPLICATION PROCESS

Medical-Use— RMD

The current application process for a medical-use dispensary, following incorporation within the CCC, is set forth on the [Commonwealth of Massachusetts website](#). In contrast to adult-use applications, medical-use applications require the applicant to operate a unified cannabis business that includes cultivation, manufacturing and retail operations. One important change implemented in the July 2017 Act is that medical-use licensees are no longer required to be non-profit entities.

Adult-Use

As noted earlier, the 935 CMR 500 et seq. regulations have been promulgated and revised, effective first in January 2021 and then re-issued with minor modifications on May 5, 2021. The Revised Regulations cover a multitude of different types of licenses, including for retail dispensaries, cultivation, product manufacturing, craft marijuana cooperative, microbusiness, laboratory, research and, as approved in the Revised Regulations, delivery operator, marijuana courier and social consumption.

A social consumption pilot program will be implemented in up to 12 municipalities, expanding to all municipalities if the CCC determines the pilot is successful. For the first two years following the date the first delivery-only licensee becomes eligible to commence operations, only economic empowerment and social equity applicants can apply for delivery-only licenses and participate in the social consumption pilot. The CCC has opined that in order to commence, social consumption would require additional enabling legislation from the Massachusetts Legislature. Insofar as the 2022 Act included the required municipal authorization process for social consumption establishments, movement on the long-planned social consumption pilot should commence later in 2022 or during 2023. As such, no applicant may apply for the social consumption pilot at this time.

The CCC developed application forms for each license type. Each application includes four packets, consisting of:

- Notice of Intent
- Background Check
- Management and Operational Processes; and
- Fee forms.

LICENSE APPLICATION PROCESS CONTINUED

Adult-Use ***Continued***

The CCC reviews each application for completeness and compliance with the applicable regulations. In nearly all cases, the CCC sends notices identifying application sections or attached policies that require modification to be considered complete.

Once all application parts are submitted and reviewed by CCC Staff, any issues are resolved and the application is deemed complete, the CCC meets and votes to grant a provisional license, either as filed or with specified conditions. Meetings are generally scheduled at least monthly, and a list of applications for approval is circulated a few days before each month's meeting. A provisional license authorizes a licensee to commence buildout and implementation of operational measures, subject to CCC review and approval of plans. It also requires licensees to make payment arrangements to conduct background checks by the CCC's vendor. A final license and confirmation of the ability to commence operations are issued once the licensee passes post-provisional license and post-final license inspections.

Application packages require a form certifying that the applicant and municipality have agreed to and signed an HCA. The applicant must also certify compliance with holding a community outreach meeting to solicit community input about the proposed cannabis facility. As part of the 2022 Act, applicants are now required to include the actual signed HCA as part of the application filing and the CCC is required to substantively review and approve the HCA, or send it back to the applicant and the municipality for correction and resubmission.

Adult-Use Priority Processing

As noted above, in 2018, the CCC gave existing RMDs and economic empowerment applicants priority processing for adult-use applications. The CCC advised that priority processing would also be granted to microbusiness, craft cannabis, outdoor cultivation applicants, those qualifying for the CCC's social equity program, and state-certified minority-, disability-, women- and/or veteran-owned businesses.

Medical/Adult Use **Mixed Use Facilities**

The CCC regulations at 935 CMR 502 et seq. originally established limited additional rules for licensees offering both medical-use and adult-use cannabis at the same location, including minimum separation requirements between the different operations. However, these rules were eliminated and integrated into the existing 935 CMR 500 and 501 rules in the January 2021 updates.

POST-LICENSING REQUIREMENTS

Renewals

Adult-use and individual licensees must apply to have their licenses renewed annually. The renewal is due one year after the license fee payment to the CCC—which is paid following approval of the provisional license. Licensees are required to file the CCC renewal form not less than two months before the renewal due date. The renewal form seeks updated information on a number of specified areas as well as additional information specific to particular license types. Licensees must also ask and report on any costs incurred by the city or town in connection with the operation of the licensed business.

Compliance/Enforcement

Licensees are required to comply with many regulatory requirements on an ongoing basis. Therefore, in addition to annual renewal reviews, the CCC maintains inspection and enforcement personnel to identify any material compliance issues and, if needed, to take enforcement actions authorized under the Revised Regulations, including, but not limited to, sales cessation, suspension, fines and license revocation.

MUNICIPAL REQUIREMENTS

General

As part of the medical- and adult-use processes, applicants must select a specific site for their licensed operations and prove to the CCC that the municipality supports or does not oppose the proposed licensed operation. In the case of an adult-use operation, the application form requires a certification signed by the applicant and municipality as to the existence of the HCA and, as part of the 2022 Act, must furnish a copy of the full HCA for CCC review and approval if it complies with CCC requirements. Licensees also must work with the municipality to meet all applicable local zoning and permitting requirements and, typically, negotiate site-specific issues.

Cannabis Fees

Municipal HCAs may require payments to offset the reasonably expected costs associated with the marijuana establishment, subject to caps set in the Act (principally, not more than 3% of gross revenues). The extent of fees imposed, and their legality, have been a source of controversy relative to excessive fee demands in many municipalities and an associated criminal investigation initiated by the U.S. Attorney for the District of Massachusetts. Despite former Commissioner Title's advocacy, the CCC determined that it lacked legal authority to review fee compliance as part of the licensing process and requested that the Massachusetts Legislature amend the Act to grant express authority to review municipal fees. Legislation to address this issue by granting the CCC oversight of HCAs remains in progress. The CCC addressed this issue, in part, by requiring renewing licensees to request and submit cost data from the host city or town associated with the operation of the licensed marijuana establishment (or an attestation that the city or town has declined to provide any cost data).

Perhaps spurred on by the advocacy, investigation and information disclosure efforts, HCA fee assessment policies have changed. Several municipalities in the Commonwealth (including Northampton and Cambridge) have voluntarily reduced or eliminated their demands for HCA-related payments. Additionally, HCA fees should end as a matter of law in the next few years, as assessments are limited to the first eight years of the HCA contract (increased in the 2022 Act from the former five-year period). The 2022 Act comprehensively addressed concerns about municipal fee overreach by expressly enabling CCC HCA review rights during both initial and renewal license reviews and changing the fee assessment process from using agreed

MUNICIPAL REQUIREMENTS CONTINUED

Cannabis Fees ***Continued***

upon percentages from gross revenue up to a three percent (3%) cap to a new annual process, aligned with the timing of a licensee's renewal filing, where the municipality must provide documentation of all costs proposed to be charged to the licensee up to the above cap. Licensees can then choose either to pay or contest the proposed assessment, with the licensee potentially securing repayment of legal fees and costs in the event the licensee prevails on its claim that proposed costs are unreasonable or excessive.

STATE OFFICES AND AGENCIES

Cannabis Control Commission

COMMISSIONERS:

Shannon O'Brien (Chair), former Massachusetts State Treasurer.

Nurys Camargo, former Director of External Affairs for AT&T.

Ava Callender Concepcion, former Director of Governmental Affairs and External Partnerships for the Suffolk County District Attorney's Office.

Kimberly Roy, former Director of External Affairs for the Worcester County Sheriff's Office.

Bruce Stebbins, former Commissioner for the Massachusetts Gaming Commission.

EXECUTIVE DIRECTOR:

Shawn Collins, former attorney working for Treasurer Goldberg.

GENERAL COUNSEL:

Christine Baily, former staffer at the Supreme Judicial Court and Assistant Attorney General in the Administrative Law Division of the Government Bureau.

COMMUNICATIONS DIRECTOR:

Cedric Sinclair, formerly of UMass Boston.

LICENSING DIRECTOR:

Kyle Potvin, former staffer at the Department of Transportation.

CHIEF OF INVESTIGATIONS AND ENFORCEMENT:

Yaw Gyebi, Jr., former Chief of Enforcement at the Massachusetts Commission Against Discrimination

STATE OFFICES AND AGENCIES CONTINUED

Cannabis Control Commission Continued

DIRECTOR OF RESEARCH:

Julie Johnson, former National Institute of Health (NIH) Ruth L. Kirschstein National Research Service Award Fellow at Johns Hopkins Bloomberg School of Public Health and Heller School of Social Policy and Management at Brandeis University.

CHIEF FINANCIAL AND ACCOUNTING OFFICER:

Adriana Leon, former Budget Director for the Massachusetts Senate Ways and Means Committee.

CHIEF OPERATING OFFICER:

Alisa Stack, former General Manager of Takoma Wellness Center, the oldest medical marijuana dispensary in Washington, D.C.

CHIEF PEOPLE OFFICER:

Erika White, former Director of Human Resources and Organizational Development at Commonwealth Care Alliance.

The CCC offices are located at Union Station in Worcester.

Cannabis Advisory Board

The Cannabis Advisory Board is a 25-member group with expertise in cannabis regulatory issues. The Board is organized into five subcommittees, each with a Chair, assigned members and assigned Commissioner Liaison::

- Cannabis Industry
- Market Participation
- Public Health
- Public Safety and Community Mitigation
- Research

Massachusetts Legislature— Joint Committee on Cannabis Policy

CO-CHAIRS:

Sonia Chang-Diaz (Senate)

Daniel Donahue (House)

KEY DECISIONS ON MUNICIPAL REGULATION OF CANNABIS

Valley Green Grow, Inc. v. Town of Charlton

Valley Green Grow, Inc. v. Town of Charlton, No. 18 MISC 000483 (RBF), 2019 WL 1087930 (Mass. Land Ct. March 7, 2019) (Valley Green I). The Land Court held that a municipality could not ban the use of recreational marijuana through a General Bylaw amendment passed by a majority vote where the municipality has chosen to regulate marijuana through traditional zoning mechanisms. Since the Town of Charlton had already amended its zoning bylaw to allow marijuana establishments by special permit in certain zoning districts, it could not use a General Bylaw amendment to regulate the same use already regulated in its zoning bylaw.

Valley Green Grow, Inc. v. Town of Charlton II

Valley Green Grow, Inc. v. Town of Charlton, No. 18 MISC 000483 (RBF), 2019 WL 3815837 (Mass. Land Ct. Aug. 14, 2019), and *aff'd*, 99 Mass. App. Ct. 670 (2021) (Valley Green II). The Land Court found, and the Appeals Court affirmed, that the cultivation of marijuana was within the meaning of an agricultural use that was allowed by right under the municipal zoning bylaw. The 2016 amendment to Section 3 of the Zoning Act (G.L. c. 40A, § 3) provides only that growing and cultivating marijuana do not qualify for the zoning exemption granted to other commercial agricultural uses. The 2016 amendment, the courts held, does not bear on whether a town's existing bylaw allows the growing and cultivation of marijuana in a town's agricultural district.

Bask, Inc. v. Borges

Bask, Inc. v. Borges, 19 MISC 000529 (HPS), 2020 WL 7688035 (Mass. Land Ct. Dec. 23, 2020). The Land Court found that a municipality overstepped its bounds in denying a request for a special permit for a retail marijuana establishment based on purported traffic concerns where they failed to distinguish why an approved larger proposed retail marijuana dispensary, a short distance away, would not generate traffic. The decision to deny the special permit was held to be a "mere pretext" where the municipal council's findings were conclusory and devoid of factual support. A Notice of Appeal was filed, and oral argument was held on April 6, 2022 in front of the Supreme Judicial Court. As of May 2022, the decision is under advisement.

Brooks v. City of Haverhill

Brooks v. City of Haverhill, 19 MISC 000265 (RBF), 2020 WL 2850135 (Mass. Land Ct. June 2, 2020), and *aff'd* 100 Mass. App. Ct. 1105 (2021). The Land Court, affirmed by the Appeals Court, determined that the city's amendment to its zoning ordinance to create a licensed

KEY DECISIONS ON MUNICIPAL REGULATION OF CANNABIS CONTINUED

marijuana establishment overlay zone was a valid exercise of municipal authority, related to legitimate zoning purposes and not spot zoning. The zoning ordinance had measures in place to minimize impacts on adjacent properties, residential areas, schools and other places where children congregate including site plan review, special permitting, design and licensing requirements, traffic study, odor control and a security plan, among others, that supported the validity of the regulation.

Mederi, Inc. v. City of Salem

***Mederi, Inc. v. City of Salem*, 488 Mass. 60 (2021).** The Supreme Judicial Court (“SJC”) found that a municipality has discretion to enter into a host community agreement (“HCA”) with any applicant that meets a city or town’s minimum requirements. The City of Salem here had a rational basis for deciding to enter into an HCA with certain applicants but not others, in that it considered a number of factors and ultimately chose applicants with stronger capitalization and more cannabis experience. The SJC acknowledged that municipalities are able to play a substantial role in the cannabis licensing process, provided they stick to regulating the time, place and manner in which an applicant may operate.

Revolutionary Clinics II, Inc. v. City of Cambridge

***Revolutionary Clinics II, Inc. v. City of Cambridge*, 1981-CV-03035 (Mass. Super. 2020).** The City of Cambridge attempted to implement a two-year moratorium on the issuance of Cannabis Business Permits to any entities that did not qualify as certified economic empowerment applicants. Plaintiff Revolutionary Clinics, a registered marijuana dispensary (RMD) seeking to convert to adult-use operations, filed a motion for preliminary injunction to prevent the City of Cambridge from implementing the moratorium. The Superior Court initially enjoined the City from imposing the moratorium after finding that Revolutionary Clinics had a likelihood of success on the merits of its claim that the moratorium was in direct conflict with the Massachusetts’ cannabis regulatory scheme, which provides for expedited review, on an alternating basis, of economic empowerment applicants and RMDs like itself that are seeking to convert to adult-use operations. However, the Appeals Court reversed the injunction after determining that there was nothing in the moratorium that conflicted with the cannabis regulations—noting that the regulatory scheme merely governed the activity of the CCC’s review process and did not impose a duty on municipalities to ensure that equal numbers of economic empowerment applicants and RMDs apply to the CCC for a license. Revolutionary Clinics’ renewed motion for preliminary injunction was subsequently denied and they voluntarily dismissed their case against the City in January 2021.

KEY DECISIONS ON MUNICIPAL REGULATION OF CANNABIS CONTINUED

**Rosenfeld, Trustee of Ellen
Realty Trust v. Town of
Mansfield**

***Rosenfeld, Trustee of Ellen Realty Trust v. Town of Mansfield*, 19 MISC 000357 (HPS), 2020 WL 1819671 (Mass. Land Ct. Apr. 8, 2020), *aff'd Commcan, Inc. v. Town of Mansfield*, 488 Mass. 291 (2021).** The municipality attempted to prevent a licensed medical marijuana facility from converting to an adult-use retail establishment claiming that it was not “engaged” in the sale of marijuana since it had not constructed the RMD facility nor commenced sales due to a pending zoning appeal. The Land Court, affirmed by the SJC, held that once an RMD starts the process of obtaining a license to sell marijuana for adult-use, it will be found to be “engaged” in the sale of marijuana and its pre-existing operations will be grandfathered in under G.L. c. 94G. The SJC determined that the applicant was “engaged” in the sale of marijuana because it had taken those steps necessary to commence sales. It had pursued and obtained both a provisional license and host community agreement and was actively litigating the abutter’s claims. This was enough for the court to find it met the statute’s requirements, and the Town could not prevent its conversion.

**West Street Associates, LLC v.
Planning Board of Mansfield,**

***West Street Associates, LLC v. Planning Board of Mansfield*, 488 Mass. 319 (2021).** Abutting landowner of a proposed location for a medical marijuana dispensary by a recently converted for-profit organization brought action against the Planning Board of Mansfield for approving the issuance of a special permit to the for-profit, despite a town bylaw requiring medical marijuana dispensaries to be operated by nonprofit entities. The SJC ruled in favor of the Planning Board, determining that because the Commonwealth of Massachusetts passed the 2017 Act, which, among things, repealed the 2012 Act which required that medical marijuana dispensaries be operated by nonprofit entities and explicitly allowed nonprofits to convert to for profits and required that marijuana treatment centers only “be registered to do business in the Commonwealth as a domestic business corporation or another domestic business entity,” the town of Mansfield’s bylaws requiring the same was preempted by state law.

About Davis Malm

For over 40 years, Davis Malm has been a premier full-service, Boston-based law firm representing businesses, institutions and individuals in a wide spectrum of industries. Clients rely on Davis Malm's attorneys to efficiently deliver successful results through direct partner involvement, responsive client service, and creative and strategic problem solving. Our interdisciplinary team of business, real estate, employment, regulatory, tax and intellectual property attorneys possess years of experience and in-depth knowledge of issues facing business owners. We work closely to provide coordinated and comprehensive advice to meet each client's goals and have the agility necessary to handle any issues that arise during the course of a matter. Davis Malm is a member of the International Lawyers Network, representing Massachusetts and northern New England, which enhances our robust international services to clients doing business globally. For more information, please contact an attorney in our Cannabis Law practice: cannabislaw@davismalm.com.



DAVIS MALM
ATTORNEYS

One Boston Place, 37th Floor, Boston, Massachusetts 02108 | 617.367.2500 | davismalm.com

©2022 Davis, Malm & D'Agostine, P.C. This guide contains addresses of Internet websites and industry resources. These website addresses are being provided as a convenience and for informational purposes only; they do not constitute legal advice or an endorsement or approval by Davis, Malm & D'Agostine, P.C. of any of the products, services, or opinions of the agency, corporation, organization, or individual host for each such website. Davis, Malm & D'Agostine, P.C. bears no responsibility for the accuracy, legality, or content of the external site or for that of subsequent website addresses. Please read our Disclaimer, which can be found at davismalm.com/disclaimer.