

ESSAY

Municipal Barriers to Cannabis Enterprises

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The nation's burgeoning patchwork of state cannabis industries are arguably the most heavily regulated industries in the land. While most investors and aspiring operators have a certain level of awareness regarding the complexities that await them in compliance with state-specific regulations, many overlook the gating issues that exist in the arena of municipal compliance. Municipal barriers to entry take many forms but, most commonly, exist in the form of zoning compliance and local approvals often required by state-regulatory agencies.

Take zoning in Rhode Island, for example. Each city and town – independent of one another – decides which zones within its municipal limits are permissible for cannabis industry uses. Many municipalities have limited cannabis operations to specific locations. Others have taken steps to “zone out” cannabis businesses entirely. Moreover, a handful of cities and towns require not only that a cannabis operation locate within a specific zone (light industrial, commercial, etc.), but that certain distance buffers exist between the cannabis business and preexisting entities such as places of worship, schools, residences, youth centers and the like. The cumulative result is that there is limited real estate in the state suitable for cannabis enterprises and significant barriers to establishing a marijuana enterprise.

While the Rhode Island Department of Business Regulation does not require any other local permissions or approvals other than zoning compliance as a precondition to the award of a cannabis license, other jurisdictions vary. For example, the Massachusetts' Cannabis Control Commission requires letters of non-opposition from the municipality in which the cannabis business intends to locate before applying for a cannabis license. The process for obtaining these letters differs. In Fall River, for example, a letter of non-opposition is awarded at the sole discretion of the mayor. In other municipalities, the letter is awarded through city or town council processes.

In addition to letters of non-opposition, cannabis businesses in Massachusetts are also required to enter into community host agreements as a prerequisite to the award of licenses to operate. Contractual in nature, these agreements arrange for impact fees to be paid by cannabis operators to the cities or towns in which they locate. The agreements must be negotiated and approved through proper municipal channels.

While cannabis operators have gained a foothold in states across the country, barriers to enter this rapidly evolving industry such as those that exist in municipalities will continue to play a huge role in the short and long term. Interested parties are wise to stay informed to better manage the risk against the reward when considering entering the highly-regulated cannabis industry.



Benjamin L. Rackliffe is a Partner with Pannone Lopes Devereaux & O’Gara LLC and a member of the firm’s Corporate & Business Law Team. He is considered a leading authority in the areas of corporate and regulatory compliance within nascent cannabis industries. For the better half of a decade, he has been at the forefront of advising businesses on the ever-evolving state and federal cannabis law and policy landscape in both medical and recreational markets throughout New England and elsewhere. Within the State of Rhode Island, Ben has advised approximately two dozen licensed cultivation companies through real estate, licensing, regulatory compliance and investment related matters. Outside of Rhode Island, he routinely advises dispensary and cultivation operators, including the owner of the largest outdoor cannabis cultivation on the east coast, as well as a publicly traded Canadian company, on diverse corporate matters. In addition, Ben advises investors on risk mitigation measures within the cannabis space, and has further parlayed this experience in the nation’s burgeoning hemp industry. He earned his J.D. from Roger Williams University School of Law and his undergraduate degree from Providence College. He is admitted to practice law in Rhode Island, Connecticut and New York. To contact Ben, please call 401-824-5100 or email brackliffe@pldolaw.com.

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