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The Cannabis Control Commission
101 Federal Street, 13th Floor
Boston, MA 02110

Dear Chairman Hoffman and Commissioners:

Thank you for the opportunity to submit comments on the Cannabis Control Commission's proposed regulations for implementation and oversight of the adult use of marijuana in the Commonwealth (the "Proposed Regulations").

These comments reflect the concerns and suggestions of the Executive Office for Administration and Finance ("A&F") and the Department of Revenue ("DOR"), one of its constituent agencies. Other executive agencies will be submitting comments on the Proposed Regulations under separate cover.

Under Executive Order 562, A&F reviews all regulations proposed for promulgation by an agency within one of the Executive Offices in the Governor's Cabinet.[1] In calendar years 2016 and 2017, A&F reviewed and approved approximately 490 draft and final regulations submitted by those Executive Offices. These individual reviews were in addition to a Cabinet-wide, systematic regulatory review process in 2015 and 2016 in which A&F reviewed and updated more than 1,700 existing regulations across all Executive Offices. The Executive Order articulates a number of standards that A&F uses in the required review process. The comments below are intended to apply those same standards to the Commission's Proposed Regulations.

We appreciate the exceptional effort that was required for the Commission to prepare a complete set of draft regulations in the short period since its initiation in September 2017. We are also grateful for the Commission's consideration of our comments and suggested changes to the Proposed Regulations. We are available to discuss any questions the Commission may have regarding our comments or other matters as the Commission completes the regulatory process.

[1] Executive Order 562: To Reduce Unnecessary Regulatory Burden is available at https://www.mass.gov/executive-orders/no-562-to-reduce-unnecessary-regulatory-burden.

I. Complexity and Scope of the Regulations

A&F's overarching concern with the Proposed Regulations is their complexity and scope. The Commission faces a daunting task in introducing a comprehensive licensing and regulatory structure, without the benefit of established models, for an altogether new area of commerce. We are concerned that the Commission has added to the inherent difficulty of this assignment by expanding its initial licensing scheme beyond the immediate requirements of Chapter 94G, the adult use marijuana statute. Chapter 94G itself distinguishes between essential activities and practices that the Commission is required to provide for in regulation and supplemental activities and practices that the Commission may in its discretion choose to address in regulation. Compare G. L. c. 94G, § 4(a½) with G. L. c. 94G, § 4(b).

As the Commission well knows, the timeline to begin licensing marijuana establishments is short. The Commission is required to begin accepting license applications by April 1, 2018, and it must begin issuing licenses by June 1, 2018. In addition, the Commission must assume the oversight and licensing of the medical use of marijuana program from the Department of Public Health ("DPH") no later than December 31, 2018. See St. 2017, c. 55, § 64. In light of this challenging timeline, A&F questions whether the Commission has the capacity to review, license, and regulate both those marijuana establishments that the Commission is required to license by statute, and the additional categories of marijuana establishments now included in the Proposed Regulations, such as social consumption establishments, mixed use social consumption establishments, and delivery-only retail establishments. As discussed in more detail in section II below, social consumption and mixed use social consumption establishments pose particularly thorny statutory, regulatory, and administrative complications that seem unresolved in the Proposed Regulations.

Given the aggressive timeline and the special challenges of regulating these novel establishments, A&F recommends that the Commission consider delaying the licensing and regulation of social consumption establishments, mixed use social consumption establishments, and delivery-only retail establishments until such time as the regulatory framework for the core marijuana establishments is in place and operating successfully. At this time, the Commission's time and resources may be best spent on the initial licensing and oversight of the marijuana cultivators, retailers, transporters, researchers, and independent testing laboratories. Comments from other executive department agencies are in process and will express the same general concern. As this new industry is established: simpler is better.

II. Social Consumption Establishments

The decision to license social consumption establishments in the initial licensing period raises a number of statutory, regulatory, and policy concerns that do not appear to be fully addressed in the Proposed Regulations. Our understanding is that no other state has yet approved facilities that serve marijuana for on-site consumption.

A. Potential Conflicts with Background Law

We are concerned that the licensing and operation of both kinds of social consumption establishments is likely to conflict with existing state law. See 935 CMR 500.145(A)-(G). The Smoke Free Workplace Law prohibits smoking in most workplaces, including "restaurants, cafes, coffee shops, food courts or concessions, supermarkets or retail food outlets, bars, taverns, or in a place where food or drink is sold to the public and consumed on the premise." See G. L. c. 270, § 22(b)(2). Smoking is defined under the statute to include the lighting or possession of a tobacco or non-tobacco product designed to be combusted or inhaled. See G. L. c. 270, § 22(a). While the Smoke Free Workplace Law does contain exceptions for retail tobacco stores and smoking bars, the existing exceptions would not extend to establishments allowing for the sale and consumption of marijuana products.

In addition, it seems likely that the Proposed Regulations governing mixed-use social consumption do not comply with the requirements of Chapter 94G intended to prevent persons under 21 years of age from exposure to marijuana and marijuana establishments. Section 4(a½)(xxi) of Chapter 94G specifically requires that the Commission's regulations include "a prohibition on persons under 21 entering marijuana establishments." As drafted, however, 935 CMR 500.145(E)(5) permits a restaurant, theater, cafe to operating as a mixed use social consumption establishment to admit persons under 21 to the premises. We are not convinced that the Proposed Regulations resolve this clear conflict by requiring that a mixed-use establishment simply adopt "procedures to ensure" that marijuana consumption is limited to restricted areas.

B. Additional Complications

The Proposed Regulations also adopt standards for mixed-use social consumption establishments that are at variance with baseline standards that apply to all other classes of marijuana establishments. Some of these variations may simply be curable drafting issues. Others appear to arise from the anomalous situation created by mixed use licensing: operating a regulated marijuana business immediately alongside a pre-existing non-marijuana business on the same premises. This arrangement presents problems of administration, compliance, and enforcement, particularly in the small business settings that the Commission has identified as likely recipients of mixed use licenses: restaurants, theaters, yoga studios, and the like.

As a general matter, the Proposed Regulations require that any "employee" of a "Marijuana Establishment" be 21 years of age or older. See 935 CMR 500.002. This applies without exception to marijuana cultivation establishments, manufacturing establishments, testing, laboratories, retail establishments, and transporters. Mixed-use social consumption establishments, however, appear to be granted an indirect exemption from this general rule. Without addressing the issue directly, draft regulation 935 CMR 500.145(E)(5) states simply that employees of a mixed-use social consumption establishment who are under 21 are prohibited from having contact with marijuana products or entering areas where marijuana is consumed. The unstated allowance of the provision is that mixed-use social use establishments may nevertheless employ persons under 21.[2]

[2] This seems to present the same conflict with the prohibition in G. L. c. 94B, § 4(a½)(xxi) that we discuss above.

The assumption behind the Proposed Regulations appears to be that businesses holding mixed-use licenses—restaurants, theaters, and other small establishments—will be able to operate two fully independent operations on the same premises and that staff not qualified to serve as registered Establishment Agents can remain fully insulated from the operations of the marijuana operation. A&F questions whether the Commission can realistically expect licensees to adhere to the kind of imaginary line-drawing that the draft regulation proposes.

Mixed-use social use establishments that operate as restaurants are also exempt from regulations that carefully limit what sorts of marijuana products all other retail or social consumption establishments may serve to patrons. The Proposed Regulations appear to reflect a general policy judgment that for health and safety reasons, any marijuana products sold to consumers at a social consumption establishment should be limited to individual, pre-packaged marijuana servings of manufactured products in original packaging containing all required safety warnings. See 900 CMR 500.105(E)-(F), (N) & 900 CMR 500.145(A)-(C). Mixed use establishments also licensed as restaurants, however, are not subject to these controls and may instead prepare or further "process" marijuana products on site before serving. See 900 CMR 500.145(C). A&F lacks the subject area expertise to evaluate any health risks that could arise from these exceptions, but we note the divergence from the general approach of the Proposed Regulations and question whether it represents a significant regulatory gap.

We believe these concerns foreshadow other, unanticipated problems of administration and oversight in the treatment of social consumption and mixed-use social consumption establishments under the Proposed Regulations. These examples also illustrate why we believe it would be advisable for the Commission to narrow the scope of the Proposed Regulations and focus on the successful promulgation and implementation of its proposed regulatory regime to core marijuana establishments. We therefore reiterate our recommendation that the Commission consider delaying the licensing of both classes of social consumption establishments.

III. Limitation on Sales

The Proposed Regulations provide in 935 CMR 500.140(E) that a marijuana retailer may not sell "more than one ounce of marijuana to a consumer at a time." The Proposed Regulations, however, leave the term "at a time," undefined, with the consequence that a marijuana retailer could circumvent this requirement by interpreting "at a time" narrowly. May a retailer sell five ounces to a single consumer on the same day, provided each transaction is separated by an interval of 10 minutes? Or an interval of 60 minutes? A&F recommends that the Proposed Regulations provide further definition to the term "at a time" to give full effect to the one ounce limitation, while providing clear guidance to marijuana retailers and consumers.

The limitation regarding the value of marijuana product that may be delivered also requires clarification. In 935 CMR 500.105(N)(1)(g), the Proposed Regulations provide "[t]he maximum retail value of any home delivery shall be $3,000, although multiple orders of different Marijuana and Marijuana Products may be included in that maximum value." It is difficult to reconcile this limitation with the restriction in 935 CMR 500.140(E), which, as discussed above, provides that a retailer may not sell "more than one ounce of marijuana to a consumer at a time."

We recommend that the Commission reevaluate this restriction to ensure it is in keeping with the other limitations on sale in the Proposed Regulations.

IV. Determination that Applicant is Responsible or Suitable Under Licensing and Registration Requirements

The Proposed Regulations state broadly at 935 CMR 500.400(C) that a marijuana establishment may be denied an initial application for license if "the applicant has been determined to be either not responsible or suitable pursuant to any one or more of the factors listed in 935 CMR 500.901." The more detailed provisions of 935 CMR 500.901, however, speak only to the "suitability" of applicants, and do not provide parameters for responsibility.

We suggest that the Proposed Regulations either supply standards for determining whether an applicant for licensure is "responsible" or eliminate that term and clarify that "responsibility" is a component of "suitability" more generally.

In addition, we are concerned that the Proposed Regulations do not adequately establish the Commission's authority to apply its discretion to protect the public interest when evaluating applications for licensing by marijuana establishments and applications for registration by prospective employees and other Establishment Agents. Proposed Regulation 935 CMR 500.400 broadly states that the Commission may deny an initial application for a Marijuana establishment license if the applicant is not "suitable" or "responsible," or for "[a]ny other ground that serves the purpose" of Chapter 94G and the implementing regulations. This discretion may be undermined or limited by the treatment of the more specific suitability criteria relating to background checks laid out 935 CMR 500.901 and its accompanying Table A. Accordingly, we suggest that the Commission incorporate in 935 CMR 500.901 and Table A language that clearly preserves the Commission's discretion to deny a license application on the general grounds stated in 935 CMR 500.400.

Likewise, we recommend that the Commission include this same sort of clarifying language in the provisions and accompanying tables addressing the evaluation of applications for registration by prospective employees and other Establishment Agents. The effect of the current language of 935 CMR 500.902 & 903 and their accompanying tables is to call into question the discretion the Commission otherwise reserves in 935 CMR 500.031(F) to deny an application for registration on discretionary grounds.

Finally, we observe that the language governing discretionary denials for unsuitability in 935 CMR 500.031(F) differs from the language at 935 CMR 500.400(C) & (F). We do not see a policy justification for the narrower approach taken in the former provision; therefore, we recommend that the language in 935 CMR 500.400(F) be adopted in 935 CMR 500.031.

V. Point of Sale System Requirements

935 CMR 500.140(G) of the Proposed Regulations sets forth requirements for a marijuana retailer's point of sales system ("POS"). As drafted, the regulations do not appear to account for the fact that marijuana retailers may sell both marijuana products and other taxable goods not

containing marijuana. DOR will need to track sales tax revenue from the sale of marijuana products separately from sales tax revenue associated with the sale of other products because of the differing tax rates associated with the two classes of sales.

Adjusting POS systems to track revenue separately this way may pose a challenge for smaller retailers during the initial licensing period, given the multiplicity of differing retail systems in use. Existing businesses that add marijuana products under the proposed mixed-use license may face special complications in accurately distinguishing the two classes of sales. In any case, A&F suggests that the Proposed Regulations explicitly require marijuana retailers to adopt separate accounting practices at POS for marijuana and non-marijuana sales.

While the Proposed Regulations require approval of such POS systems by the Commission and the DOR, the regulations do not state that DOR has the right to inspect and examine the point of sales systems on an ongoing basis in order to ensure compliance with Massachusetts tax law and the requirements set forth in 935 CMR 500.140(G). A&F therefore suggests adding the following subsection: "The Department of Revenue reserves the right to audit and examine a POS system used by a Marijuana retailer in order to ensure compliance with Massachusetts tax law and 935 CMR 500.000."

VI. Ownership and License Restrictions

Consistent with statute, see G. L. c. 94G, § 16, Proposed Regulation 935 CMR 500.050 limits to three the number of each class of license available to a "controlling person." A controlling person is defined as in G. L. c. 94G, § 1 to mean "an officer, board member or other individual who has a financial or voting interest of 10 per cent or greater in a marijuana establishment." See 935 CMR 500.002.

The Proposed Regulations, however, do not limit the ownership interests of corporate persons. This makes the ownership and licensing restrictions vulnerable to circumvention, for instance in circumstances where a corporate entity or interrelated corporate entities are owned by related parties that in any individual instance do not reach the 10 per cent threshold. We recommend that the definition of "controlling person" be extended to corporate persons to foreclose the evasion of the statute's intended licensing limitations.

The Proposed Regulations are also silent at 935 CMR 500.050 as to the scope of licenses in terms of location and geographies. As a result, it is not clear whether some of the license classes may in some circumstances authorize regulated activities at more than one location. We recommend clarification on this point in order to ensure that the licensing limitations prescribed in statute, see G. L. c. 94G, § 16, provide a meaningful limit.

VII. Transition of the Regulation of Medical Marijuana from the Department of Public Health to the Commission

We believe the Proposed Regulations would benefit from greater clarity about the relationship between the Commission's oversight of adult use marijuana and DPH oversight of medical use marijuana. As we understand the Proposed Regulations, with limited exception, they do not

apply to medical use marijuana. This is consistent with the provisions of St. 2017, c. 55, §§ 64-71, which leave control and oversight of the medical use program with DPH until the Commission certifies that it has established the legal and regulatory framework to regulate and oversee medical marijuana without disruption to the medical marijuana industry or patient access to medical marijuana.

We suggest that in order to avoid potential confusion, the Commission add language clarifying that the Proposed Regulations leave the current DPH regulatory regime untouched. This likely will also require an adjustment to the definition of "Marijuana Establishment" in 935 CMR 500.002 in order to exclude medical use facilities until the Commission takes responsibility for overseeing this program. The larger clarification we are recommending may finally require some qualifying language at those few points of contact between medical use and adult use regulation that are unavoidable in the Proposed Regulations, given the Commission's need to address co-located adult use and medical use marijuana operations.

Finally, we recommend that the Commission's final regulations make clear in general terms that the Commission anticipates incorporating regulations applying to the Medical Use of Marijuana Program following the transfer of the Program from DPH to the Commission.

VIII. DOR Enforcement Authority

An important guarantee of DOR's ability to collect unpaid taxes is its statutory authority to seize assets of delinquent taxpayers. See G. L. c. 62C, §§ 54 & 56. The Proposed Regulations do not acknowledge DOR's ability pursuant to this general authority to seize and resell the assets of a tax delinquent marijuana establishment. Under the recreational marijuana regime, only licensed marijuana retailers, cultivators, product manufacturers, and testing facilities can legally sell or transfer marijuana.

The regulations should explain how the Commission will recognize and implement DOR's existing authority in this area in order to address the situation of a marijuana establishment that is delinquent in its tax obligations.

IX. Non-Compliance with Tax Obligations as Grounds for License Revocation or Denial

While 935 CMR 500.450(C) notes that failure to comply with tax or child support laws is full and adequate grounds for denying the renewal application or revoking the license of a marijuana establishment, 935 CMR 500.103(D), which concerns license expiration and renewal requirements, should be revised to require full tax compliance as well. As drafted, 935 CMR 500.103(D)(3) is limited to requiring a licensee seeking to renew its license to have "filed any tax returns required pursuant to M.G.L. c. 64N." We recommend that this language be replaced to require that a licensee seeking to renew its license has "filed any tax returns required and paid any tax due under the Massachusetts laws."

X. Additional Substantive and Technical Comments

- Inconsistent Terminology:
  - "MIP" is used throughout, but never defined. We recommend that it be replaced with "Marijuana Products," which is defined.
  - "Priority Justice Applicant" is defined, but never used in the Proposed Regulations. Instead, the Proposed Regulations refer to "Equity Applicants" and "Economic Priority Applicants."
  - "Priority RMD Applicant" is defined, but never used in the Proposed Regulations. Instead, the Proposed Regulations refer to "Existing RMD License Priority Applicant."
  - "Social Consumption Operation" is defined, but the regulations repeatedly refer to "Social Consumption Establishments."

- Micro-Business: How a Micro-Business is defined and regulated lacks clarity. For example:
  - 935 CMR 500.050(I)(a) provides that "a microbusiness is a co-located Tier 1 and Tier 2 marijuana cultivator," but it is not clear what it means to be co-located.
  - It is not clear how a Micro-Business licensed marijuana product manufacturer and a Micro-Business licensed marijuana delivery service differ from a non-Micro-Business licensed marijuana product manufacturer and non-Micro-Business licensed marijuana delivery service.
  - The standard for the application fee set forth in the table in 935 CMR 500.005(A) conflicts with the application fee provided for in 935 CMR 500.050(I)(d).

- Existing Licensee Transporter: The Proposed Regulations require a license fee for Existing Licensee Transporter and refer to such a Transporter in 935 CMR 500.050(H), but the term is never defined.

- Certificate of Tax Compliance: The regulations require applicants to provide a certificate of good standing from DOR. However, individuals, unincorporated businesses and nonprofit organizations, partnerships, limited liability companies ("LLC"), and limited liability partnerships ("LLP") are issued letters of tax compliance. See AP 613. This distinction is worth highlighting because some applicants may be organized as one of these entities, and in particular, "craft marijuana cultivator cooperatives," as defined under 935 CMR 500.035(C)(1), may only be organized as LLCs and LLPs. We recommend that, in the requirements in 935 CMR 500.101(A)(3)(c) and 935 CMR 500.101(B)(5)(c), the words "and/or a certificate of tax compliance" be added after the words "certificate of good standing."

- Security Plans: 935 CMR 500.110(F)(5) requires security plans for open cultivation facilities to be shared with local law enforcement. We recommend that the same requirement apply to marijuana establishments operating in enclosed areas.

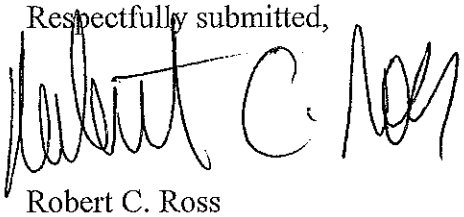
- Notification of Change: The Proposed Regulations require a marijuana establishment to notify the Commission upon certain changes, including changes of ownership, change of name, and modification of its physical location, but the Proposed Regulations provide no

standard for approving or denying such changes. We recommend further clarification on the standard of the Commission's review.

- Heading of Table A: The table applies only to Marijuana Establishment Licensees, so references to "Establishment Agents" should be deleted.

Once again, thank you for your consideration of these suggestions and comments. Please let us know if you would like to meet to discuss these points or if A&F can be of other assistance.

Respectfully submitted,



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