

# **Responsible and Equitable Regulation of Adult-Use Cannabis Act (“RERACA”)**

**CAZEO/CCAPA Land Use Legislative Wrap-Up  
(Part 2): Adult Use Cannabis**

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# **Responsible and Equitable Regulation of Adult-Use Cannabis Act (“RERACA”)**

## **Zoning and Land Use Implications of RERACA (Public Act 21-1)**

**CAZEO/CCAPA Land Use Legislative Wrap-Up  
(Part 2): Adult Use Cannabis**

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**Invited Speaker:**

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State of Connecticut**

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**Invited Speaker:**

**Benjamin H. Pomerantz, Esq.**

**Carmody | Torrance | Sandak | Hennessey LLP**

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**Invited Speaker:**

**Jacqueline Kaufman, Esq.**

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# Federal v. State : Conflict of Law

## The Controlled Substances Act (1970)

- **The Controlled Substances Act (CSA)**, signed into law by President Richard Nixon in 1970, is the main federal statute regulating possession and use of certain substances, such as heroin, LSD, cocaine, and cannabis.
  - Under the CSA, regulated drugs and substances fall into five "Schedules."
  - Schedule One is reserved for drugs that have a high potential for abuse, no currently accepted medical use, or a lack of accepted safety for use under medical supervision.
  - Schedule One drugs include, for example, heroin and LSD and, as of the date of this presentation.... Cannabis or Marijuana
  - CSA Federal Citation (*21 U.S.C. Chapter 13*)
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# **RERACA & PUMA : Cannabis Licenses**

Nine New Cannabis Licenses Created by RERACA:

(1) Cultivator; (2) Micro-Cultivator; (3) Retailer; (4) Hybrid Retailer; (5) Product Manufacturer; (6) Food and Beverage Manufacturer; (7) Product Packager; (8) Delivery Service; and (9) Transporter.

Two Existing Cannabis Licenses Created by PUMA:

(1) Producer and (2) Dispensary.

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# Authority for Municipal Regulation

Section 148 of the RERACA provides “any municipality may, by amendment to such municipality's zoning regulations or by local ordinance, (1) prohibit the establishment of a cannabis establishment, (2) establish reasonable restrictions regarding the hours and signage within the limits of such municipality, or (3) establish restrictions on the proximity of cannabis establishments to any of the establishments listed in subsection (a) of subdivision (1) of section 30-46 of the general statutes.” (i.e. certain sensitive receptors listed in Liquor Licensing Statutes ... schools, churches, charities, hospitals... Etc.)

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# Authority for Municipal Regulation

1. Bans
2. Moratoriums
3. Zoning Regulations
4. Public Referendum Option (see RERACA § 83)

Sec. 83. ( (Effective July 1, 2021) (a) Upon the petition of not less than ten per cent of the electors of any municipality, lodged with the town clerk at least sixty days before the date of any regular election ... the selectmen of the municipality shall warn the electors of such municipality that, at such regular election, a vote shall be taken to determine: (1) *Whether or not the recreational sale of marijuana shall be permitted in such municipality*, or (2) *whether the sale of marijuana shall be permitted in such municipality in one or more of the classes of license of cannabis establishments*.

The ballot label designations in a vote upon the question of cannabis establishment license shall be "Shall the sale of recreational marijuana be allowed in .... (Name of municipality)?" or "Shall the sale of cannabis under (Specified license or Licenses) be allowed in .... (Name of municipality)?" or "Shall the sale of recreational marijuana be prohibited (No Licenses) in .... (Name of municipality)?"

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# Authority for Municipal Regulation

Except...

1. Any cannabis establishments already allowed in a municipality shall not be affected by any vote.
  2. No municipality shall prohibit delivery of cannabis to a consumer, qualifying patient or caregiver when the delivery is made by a retailer, hybrid retailer, dispensary facility, delivery service, micro-cultivator or other person authorized to make such delivery pursuant to RERACA.
  3. Any restriction regarding hours, zoning and signage of a cannabis establishment adopted by a municipality *shall not apply to an existing cannabis establishment located in such municipality if such cannabis establishment does not convert* to a different license type, for a period of five years after the adoption of such prohibition or restriction. (RERACA § 148(d))
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# Authority for Municipal Regulation

*No Host Community Agreements* in Connecticut... instead:

“For up to thirty days after the opening of a retailer or hybrid retailer, a *municipality may charge such retailer or hybrid retailer* for any necessary and reasonable costs incurred by the municipality for provision of public safety services in relation to such opening, including, but not limited to, public safety costs incurred to direct traffic, *not to exceed fifty thousand dollars.*” (RERACA § 83(d))

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# Authority for Municipal Regulation

Generally, if a municipality has not set zoning standards specific to “cannabis establishments” then they are treated “as if for any other similar use, other than a cannabis establishment,” under zoning.

*(See RERACA § 148(c))*

“Retailers” and “micro-cultivators” are specifically required under the Cannabis Bill to obtain a “special permit or other affirmative approval” (primarily to ensure that population density restrictions are met). *(See RERACA § 148 (g))*

Until June 30, 2024, no municipality shall grant zoning approval for more retailers or micro-cultivators than a number that would allow for one retailer and one micro-cultivator for every twenty-five thousand residents of such municipality, as determined by the most recent decennial census. *(See RERACA § 148 (e))*

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# Municipal Zoning Changes:

The chief zoning official of a municipality shall report, in writing, any zoning changes adopted by the municipality regarding cannabis establishments pursuant to this subsection to the Secretary of the Office of Policy and Management and to the department not later than fourteen days after the adoption of such changes. (See *RARACA § 148 (b)*)

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# Municipal Zoning :

Unless otherwise provided for by a municipality through its zoning regulations or ordinances, a cannabis establishment shall be zoned as if for any other similar use, other than a cannabis establishment, would be zoned. (See *RARACA § 148 (c)*)

Drafters intended for the closest “similar use” to be liquor retail establishments.

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# Municipal Zoning :

Current Municipal Zoning – Permits or Bans Known Cannabis License Types (Dispensary and Production Licenses - between 2012 and 2020)

➤ Current Zoning Language – Largely Silent re: Adult Uses (although some municipalities have addressed in advance)

Municipal Zoning Tracker / Database

Current Events

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# Current Cannabis Consideration:

1. Location – influenced by license type (and known zoning regs) ... also, ownership considerations.
  2. Zoning – all license applicants must be able to provide evidence of “all necessary local zoning approval for the cannabis establishment operation” prior to receiving a final license.
  3. Strategic Business Planning – Business Plans / Corporate Structure.
  4. Funding
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# Other RERACA Fun Facts:

## Advertising and Marketing :

Cannabis establishments and any person advertising any cannabis or services related to cannabis shall not:

- 1) Advertise cannabis, cannabis paraphernalia or goods or services related to cannabis in ways that target or are designed to appeal to individuals under twenty-one years of age
  - 2) Engage in advertising by means of television, radio, Internet, mobile applications, social media, or other electronic communication, billboard or other outdoor signage, or print publication unless the advertiser has reliable evidence that at least ninety per cent of the audience for the advertisement is reasonably expected to be twenty-one years of age or older;
  - 3) Advertise cannabis, cannabis products or cannabis paraphernalia in any physical form visible to the public within five hundred feet of an elementary or secondary school ground, recreation center or facility, child care center, playground, public park or library;
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# Other RERACA Fun Facts:

## Advertising and Marketing :

Cannabis establishments and any person advertising any cannabis or services related to cannabis shall not:

- 4) Exhibit or use certain words in advertising, publications, or within or upon the outside of the premises, including “dispensary”, “drug store”, “pharmacy”, “apothecary”, “drug”, “drugs” or “medicine shop”.
  - 5) Advertise on or in public or private vehicles or at bus stops, taxi stands, transportation waiting areas, train stations, airports or other similar transportation venues including, but not limited to, vinylwrapped vehicles or signs or logos on transportation vehicles not owned by a cannabis establishment;
  - 6) Display cannabis or cannabis products so as to be clearly visible to a person from the exterior of the facility used in the operation of a cannabis establishment, or display signs or other printed material advertising any brand or any kind of cannabis or cannabis product on the exterior of any facility used in the operation of a cannabis establishment;
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# Other RERACA Fun Facts:

## Window Displays

No cannabis establishment shall display cannabis, cannabis products or drug paraphernalia in a manner that is visible to the general public from a public right-of-way not on state lands or waters managed by the Department of Energy and Environmental Protection.

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# Other RERACA Fun Facts:

## Use of Tax Revenue:

The tax collected pursuant to this section shall be used by such municipality to (A) make improvements to the streetscapes and other neighborhood developments in and around each community in which a cannabis retailer, hybrid retailer or micro-cultivator is located, (B) fund education programs or youth employment and training programs in such municipality, (C) fund services for individuals released from the custody of the Commissioner of Correction, probation or parole and residing in such municipality, (D) fund mental health or addiction services, (E) fund youth service bureaus established pursuant to section 10-19m of the general statutes and to municipal juvenile review boards, or (F) fund efforts to promote civic engagement in communities in such municipality.

(RERACA § 126(b)5)

# Other RERACA Fun Facts:

## Home Grow:

(Effective October 1, 2021) Any qualifying patient who is eighteen years of age or older may cultivate up to three mature cannabis plants and three immature cannabis plants in the patient's primary residence at any given time, provided such plants are secure from access by any individual other than the patient or patient's caregiver and no more than twelve cannabis plants may be grown per household.

(Effective July 1, 2023) Notwithstanding the provisions of section 13 of this act, any consumer may cultivate up to three mature cannabis plants and three immature cannabis plants in the consumer's primary residence, provided such plants are secure from access by any individual other than the consumer and no more than twelve cannabis plants may be grown at any given time per household.

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# Other RERACA Fun Facts:

## Licensed Professionals:

Except when required by federal law, an agreement between the federal government and the state, or because of a substantial risk to public health or safety, no state entity shall deny a professional license because of an individual's: (1) Employment or affiliation with a cannabis establishment; (2) possession or use of cannabis that is legal under section 21a-279a of the general statutes, or chapter 420f of the general statutes; or (3) cannabis use or possession conviction for an amount less than four ounces.

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# **Comparative Analysis (with Mass.)**

CT Population 3.5 mill / 169 Local Municipalities (per Wikipedia)

Mass. Population 6.89 mill / 294 towns & 57 cities (per Wikipedia)

## **Massachusetts Adult-Use Cannabis Statistics :**

**124 towns and cities have banned cannabis businesses**

**188 towns and cities allow cannabis**

**39 Remainder Pending / Planning**

**146 Retail Stores**

**40 Cultivators**

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# Ethical Concerns

## Ethical Concerns / Protecting Privilege

- Conn. Informal Opinion 2013-02:

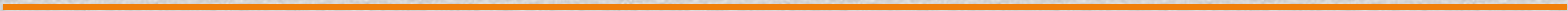
At a minimum, a lawyer advising a client on Public Act 12-55 must inform the client of the conflict between the state and federal statutes, and that the conflict exists regardless of whether federal authorities in Connecticut are or are not actively enforcing the federal statutes.

It is our opinion that lawyers may advise clients of the requirements of the Connecticut Palliative Use of Marijuana Act. Lawyers may not assist clients in conduct that is in violation of federal criminal law. Lawyers should carefully assess where the line is between those functions and not cross it.

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**THANK YOU FOR  
ATTENDING!**



# QUESTIONS?

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