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Contradictory regulations disadvantage smaller cannabis entrepreneurs

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by [Angela Yang](#)

While Massachusetts' first legal recreational marijuana businesses opened more than a year ago, many smaller cannabis entrepreneurs are still struggling to enter the market. Most municipalities have restrictive regulations that require businesses to secure a location for their enterprise while also limiting the areas in which stores can operate.

In order to obtain a license to sell recreational cannabis, entrepreneurs must first receive permission from the municipality in the form of a host community agreement. Many municipalities, however, require that potential business owners lock down a retail space before they sign that contract.

This property requirement poses a problem, as a majority of these cities also have special zoning codes for pot businesses, meaning they set specific boundaries within which shops can operate. In municipalities with strict zoning rules, dozens of aspiring store owners compete for a handful of locations.



A cannabis plant growing in a greenhouse. VIVIAN MYRON/ DAILY FREE PRESS STAFF

This sets the stage for an environment in which all but the most well-funded companies are pushed out.

David Rabinovitz, a cannabis entrepreneur who has been active in the marijuana industry for almost a decade, said he has witnessed the trend of landlords demanding large deposits and rental payments until the highest bidder claims the lot.

He said he remembers an instance where one community forced a marijuana businesses to open in one of two locations: a shopping plaza and an industrial park.

“Anybody who’s really going to want to have a good retail presence is going to want to be in that shopping plaza, so that one landlord now controls anybody who wants to open up a conventional retail store,” Rabinovitz said. “And there’s no negotiation: if you want to be in there, you do whatever the landlord tells you to do, because that’s the only landlord in town.”

In such cases, this means landlords — not the municipality or the state — dictate who ultimately obtains a license to operate.

The Massachusetts Cannabis Control Commission recognizes the issue. In a [document](#) providing guidance to municipalities on maintaining equitable marijuana policies, the CCC recommends cities not impose overly stringent buffer zones and separation requirements.

While state law mandates a 500-foot buffer around K-12 schools, additional zoning is not compulsory and is left up to individual communities. The City of Boston, for example, requires that all new marijuana businesses open no closer than a half mile away from any existing pot stores.

Jennifer Gaskin is among those trying to secure real estate for her cannabis cultivation business, Empress And Bandit Greenery, which she co-founded with her son. She said she began the process about nine months ago in Worcester.

Gaskin said the first property she planned to purchase was rejected by the city, which told her it was not zoned properly. She then found a second location, a warehouse that she planned to lease.

“Initially, when I spoke with [the landlord], he seemed like he was above board, willing to work with us,” Gaskin said. “He wanted me to put down a deposit so that he could take it off of Craigslist and stop speaking with other potential people to come into the space.”

After an initial \$5,000 payment, Gaskin and the warehouse owner began lease negotiations. She paid an additional \$12,000, representing the total of the first and last month’s rent, before Gaskin asked for the landlord’s cooperation in applying for her HCA.

Gaskin said the owner then demanded another \$100,000 to fund renovations to the property as a condition for moving forward with licensing.

“And essentially, that’s where the conversations broke down,” Gaskin said. “He started being squirrely in terms of returning my phone calls and emails.”

The landlord later told her another individual had called saying he held \$2.4 million in the bank and was willing to invest in the property, Gaskin said. Previous negotiations with Gaskin became null.

“So, essentially, we got bought out by the highest bidder,” Gaskin said. “And at that point we had already invested close to \$20,000, which is now gone.”

After acquiring a location, hopeful business owners will be able to begin the licensing application process. However, the next hurdle comes when these cannabis retailers, cultivators and manufacturers must continue to pay rent until their application is approved, despite not yet being able to operate.

“For [applicants] who tend not to have as much resources,” Rabinovitz said, “that can deplete their capital really quick.”

Chauncy Spencer has been waiting a year and a half for his HCA to be approved. He said he intends to open a dispensary and cultivation facility in Boston’s Mattapan Square.

Spencer is an Economic Empowerment Priority Applicant, a status that ensures his application will receive earlier review than those of non-priority applicants through a special CCC program that aims to promote cannabis entrepreneurship among historically disadvantaged individuals.

“It was expected that it would be considered on a municipal level, because the state had recognized we come from areas of disproportionate impact in the war on drugs and they wanted us to be included in this industry,” Spencer said. “But on a municipal level it hasn’t worked that way. My application languished till now.”

Spencer said he was the first applicant in the city to submit an application for a marijuana business. Despite this and his priority status, he said his application has been ignored about a dozen times.

“At least in Boston, business is very political,” Spencer said. “And if you don’t have that political capital, you just don’t get heard in the same way in which you should, especially if this is a top-down type of power structure where the mayor has an extraordinary amount of control.”

Boston entrepreneurs like Spencer, however, may see an improvement in coming months. The city passed an ordinance on Nov. 27 to transfer licensing jurisdiction from the Mayor’s Office to an independent board.

John Marchefka, a Social Equity applicant working on starting a cannabis business park — a complex that will house multiple marijuana businesses — said it took four months to receive his HCA from the town of Granby.

“We started talking with the town last June about a host community agreement and it took us until October to get one,” Marchefka said, “which is a little bit challenging because we were paying a fair amount of money to hold the property. We’re paying monthly option fees on it.”

Past the HCAs, long wait times persist at the state level as well.

Once the CCC acknowledges a completed application, it restricts itself to a review period of 90 days before it must either issue or deny a license. The problem is not a failure to maintain this window, Rabinovitz said, but rather that this 90-day countdown doesn't start until the CCC decides to declare an application "complete."

"So you can submit a complete application, and you can submit the fee, and then it sits and it sits and it sits," Rabinovitz said. "That's one of the big problems in all of this: the fact that the applicant is saying, 'I did my job, I got all my materials together and it isn't easy, I put everything in and I paid my fee.' The clock should start."

A CCC spokesperson wrote in an email that the commission voted this past year to expedite the review of certain applications after hearing feedback during its regulatory public comment period. Those to have their review process expedited include Social Equity Applicants as well as certified minority, women or veteran enterprises.

Morgan Fox, media relations director of the National Cannabis Industry Association, said he believes the CCC is making an effort to address the issue but has made little headway.

"This process shouldn't take this long," Fox said, "and by requiring businesses to actually have a settled location before they can even apply, it shuts out tons of people from the potential market and the people that actually can afford to do that are still losing money when they could be up and operating."

When real estate space is leased out without being used for months, the city itself also suffers a cost, Rabinovitz said.

"If a store is locked up by a marijuana operator, that store has no employees," Rabinovitz said. "And those no employees buy zero cups of coffee when they come to work in the morning. They get zero gas, they buy zero lunch and they do zero instrumental shopping. It also generates zero tax revenue."

Rabinovitz, however, said he managed to turn the system around in one municipality. The NewCann CEO said he convinced the town of Maynard to approve an HCA without having first located a space for his store.

"Every time they said 'no' I didn't hear it, I just stood there like a lunk," Rabinovitz said. "I was like a five-year-old kid who was being told it's bedtime. Every time they said no I explained to them why they should reconsider, why it was good for the community. And I got lucky."

Under the town's new system, Rabinovitz was granted six months to secure his property. It was the first ever case in Massachusetts of a municipality issuing an HCA before seeing proof of a location.

Roxbury resident Waiman Se, 23, said while he supports the state's buffer zone around schools, he would like to see more marijuana businesses in Boston.

"I think more stores in the city makes the city more like a city," Se said. "It makes it easier for millions of people to buy something."

Marianne Ajemian, 63, of Back Bay said she is concerned about the health effects of recreational marijuana use, but that she supports equity in the cannabis retail industry.

“It takes a lot of financial support to be able to [start a business],” Ajemian said. “You can’t just say, ‘We’ll give priority to those people’ and think that they’ll have the financial resources and the wherewithal to be able to do that.”

Allia Langill, 20, of Roxbury said it makes sense that finding real estate is tough for cannabis retailers, especially in Boston, because any land in the city is expensive.

“I guess you just have to find places that are good deals and I honestly don’t really know, but it would be hard,” Langill said. “This is very competitive and it’s unfair, but life’s unfair.”



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