



---

## CITY OF CAMBRIDGE

Community Development Department

---

**IRAM FAROOQ**

*Assistant City Manager for  
Community Development*

**SANDRA CLARKE**

*Deputy Director*

*Chief of Administration*

To: Yi-An Huang, City Manager

From: Iram Farooq, Assistant City Manager for Community Development, Megan Bayer, Acting City Solicitor

Date: November 20, 2023

Re: Awaiting Report #23-77, dated October 16, 2023, regarding investigating potential mechanisms to support Cannabis Business in Cambridge

---

### OVERVIEW

The City is committed to supporting the vitality of its diverse business base, including its cannabis businesses. In addition to the recent Zoning Ordinance and Cannabis Business Permitting Ordinance changes, Council requested that staff look at the following potential ways to support cannabis businesses in Cambridge: not collecting the local tax on cannabis product sales, refunding some of the commercial rent paid while awaiting a Special Permit when a Special Permit was required for operating a cannabis business, and limiting the number of cannabis retail stores allowed.

In response to the above, the Community Development and Law Departments submit the following.

### RETAIL CANNABIS BUSINESS LOCAL TAX COLLECTION

Retail cannabis sales are subject to state tax and may be subject to additional local taxes. The Massachusetts Cannabis Control Commission (MA CCC) [provides an overview of these taxes and fees](#), which are as follows:

- **State Excise Tax** - A 10.75% excise tax is imposed on transfers of cannabis and cannabis products from a retailer. There is no state excise tax on medical cannabis sales.
- **Standard Sales Tax** - Massachusetts sales tax (6.25%) also applies to all sales of cannabis and cannabis-infused products. There is no standard sales tax on medical marijuana sales.
- **Local Tax (Optional)** - A city or town may impose a tax of up to 3% of cannabis sales in its locality. Local cannabis taxes are returned to the city

or town at least quarterly. The optional local tax cannot apply to medical cannabis sales.

- **Community Impact Fees** - A city or town may impose a community impact fee to cover costs imposed upon the municipality by the operation of the Cannabis Establishment or Medical Marijuana/Cannabis Treatment Center. The fee cannot amount to more than 3% of the gross sales of the Cannabis Establishment or Medical Cannabis Treatment Center and may not be in effect for longer than five years.
  - In February 2023, City Manager Yi-An Huang notified the City Council that in response to Calendar Item No. 10 of 3/21/22, the City was no longer requiring the payment of Community Impact Fees as a condition of Host Community Agreements. The City of Cambridge has not collected any funds that were intended for the Community Impact Fee.

### **Local Tax (Optional) in Cambridge**

On February 4, 2019 Cambridge City Council accepted local acceptance statute [G.L. c.64N, s.3](#), which allowed the City of Cambridge to collect the 3% Local Tax. Per the Cambridge Finance Department, local tax payments are received quarterly and are based on sales from two months previous (e.g., Q1 is May-July sales, Q2 is August-October sales, etc.). The following chart shows totals collected to date.

FY	Q1	Q2	Q3	Q4	Total
FY22				4,020.78	4,020.78
FY23	78,648.76	80,284.17	70,864.73	102,857.36	332,655.02
FY24	104,996.47				104,996.47
				Total	441,672.27

The Local Tax Option imposed by the City pursuant to G.L. c.64N, §3 is discretionary. The City can amend the rate of the tax by vote or can even revoke it, however, changes to the adopted rate can only happen once a year. The Council would have to take a new vote to change the rate or revoke the tax.

## **CAPPING THE NUMBER OF CANNABIS RETAIL STORES**

Municipalities typically choose whether to adopt a cap as part of a package of regulations when retail cannabis uses are first adopted. To date, it does not appear that any municipality has imposed a cap after cannabis regulations have been in effect.

Cambridge City Council elected to impose the 1800 ft. buffer rule as a substitute provision instead of choosing to adopt a cap. The 1800 ft. buffer rule is captured in the Cambridge Zoning Ordinance and stipulates that no two (2) cannabis retail stores can be within 1800 ft. of each other. This rule is waived if the applicant can demonstrate that their business is 51% or more owned by an applicant that is a MA CCC- certified Economic Empowerment or Social Equity applicant.

General Laws c.94G, §3 provides that a city may adopt an ordinance that limits the number of cannabis establishments, which are any cannabis uses currently licenses by the MA CCC, in its community, but it must submit the ordinance for approval to the voters if the ordinance would:

- Prohibit the operation of one (1) or more types of cannabis establishment within the municipality;
- Limit the number of cannabis retailers to fewer than 20% of the number of liquor licenses (retail sale not to be drunk on premises) issued in the municipality under G. L. c. 138, § 15. For example, if a municipality has 100 such liquor licenses, that municipality may set a maximum limit of 20 cannabis retailers; or
- Limit the number of any type of cannabis establishment to fewer than the number of Medical Marijuana/Cannabis Treatment Centers (or MTCs) registered to engage in the same type of activity.

Further information on submitting the issue to the votes is found in the guidance from the Massachusetts Cannabis Control Commission (MA CCC) drafted in 2021 - [guidance for municipalities](#).

### **Limiting the number of stores in Cambridge**

According to the Cambridge License Commission, as of November 20, 2023, there are 45 such off-premises retail liquor licenses.

- 20% of this total would be nine (9).
- According to the MA CCC guidelines, if Cambridge imposed a cap of eight (8) or fewer cannabis establishments it would trigger the requirement that the ordinance be put before the voters.
- To date, Cambridge has five (5) Cannabis Retail Stores in operation and has another 14 Cannabis Retail Stores in process.
  - Separately, there are three (3) Marijuana/Cannabis Treatment Centers (MTCs), of which two (2) of those appear to be in the process of being sold and being converted to Retail Cannabis stores. These two (2) converting MTCs have been captured in the 14 retail cannabis business in process.

If the Council wants to move forward with imposing a limit on the number of cannabis establishments that is less than the number of cannabis establishments that are open or in the process of opening, the Law Department would need to further analyze potential legal issues concerning reducing the number below the number of cannabis establishments that are open and in the process of opening. If the Council wants to move forward with limiting the number of cannabis establishments to a number that is greater than 20% of the number of liquor licenses and greater than the number of cannabis establishments that are presently open or in the process of opening, the Law Department can prepare a proposed ordinance to do so.

## **REFUNDING RENT TO CANNABIS BUSINESSES**

The City cannot reimburse rent to cannabis businesses that had to go through the special permit process before the Council eliminated the special permit requirement because to do so the City would have to expend public funds for the benefit of private businesses. The Supreme Judicial Court has held that “It is a fundamental principle of constitutional law frequently declared that money raised by taxation can be used only for public purposes and not for the advantage of private individuals” Opinion of the Justices, 313 Mass. 779, 784 (1943).

Whether a proposed use of public funds violates the prohibition against using public funds for private purposes or the Anti-Aid Amendment of the Massachusetts Constitution generally requires a case-by-case determination and an analysis of various factors that are specific to a proposed use of public funds. Expenditure of public funds is permissible only when the dominant motive for the expenditure is a public one, even if incidental private benefits will not invalidate the expenditure. If, however, the dominant motive is to promote a private purpose, the expenditure will be invalid even if incidentally some public purpose also is served. The prohibition against using public

funds for private organizations includes any grants, contributions or donations made by a city or town to an organization for the specific purpose of directly supporting or assisting its operations.

The dominant purpose of refunding rent to some cannabis businesses is to support, aid or assist those private businesses, and therefore, it is not a permissible use of City funds.