



Wes Moore, Governor • Aruna Miller, Lt. Governor • Will Tilburg, Director

February 23, 2024

The Honorable C.T. Wilson
Chair, House Economic Matters Committee
Room 231
House Office Building
Annapolis, MD 21401

RE: House Bill 805 – Cannabis – Licensee Locations – Restrictions – Letter of Support

Dear Chair Wilson,

The Maryland Cannabis Administration (MCA) respectfully submits this letter of support for House Bill (HB) 805 – Cannabis – Licensee Locations – Restrictions. This bill clarifies the legislative intent of the zoning and planning provisions included in the Cannabis Reform Act, Chapters 254/255 of the Acts of 2023, and strikes an important balance between preserving local zoning authority and fulfilling the overwhelming mandate from Maryland voters to allow for the use, distribution and regulation of cannabis for adults 21 years of age or older.

Legislative Background

The Cannabis Reform Act established a commercial market and regulatory structure for the cultivation, manufacture, and distribution of adult-use cannabis, beginning July 1, 2023. The statutory framework prioritizes equity in licensing and seeks to ensure that individuals and communities harmed by cannabis prohibition and enforcement can access the economic opportunities associated with cannabis legalization. A common issue across states implementing adult-use cannabis legalization laws is local governments choosing to “opt-out” and prohibiting or severely restricting cannabis businesses through local zoning and planning measures. Local opt-outs and burdensome zoning ordinances have bolstered the illicit market and prevented social equity businesses from becoming licensed and operational in several other jurisdictions, including Illinois¹ where only 40 out of 185 social equity cannabis dispensary licensees (21%) were operational 18 months after award. (**Note:** this is the same amount of time allotted to Maryland cannabis licensees to become operational before facing license rescission).

¹ Casacchia, Chris, Progress not happening fast enough for marijuana social equity entrepreneurs, MJBizDaily, November 14, 2023, available at <https://mjbizdaily.com/progress-not-happening-fast-enough-for-cannabis-social-equity-entrepreneurs/>.

To avoid a similar fate in Maryland, this Committee, and the General Assembly specified in the Cannabis Reform Act that while local governments may establish “reasonable zoning requirements” for cannabis businesses, they **may not**:

- Unduly burden a cannabis licensee (36-405(b)(1));
- With the exception of on-site consumption establishments, prevent cannabis businesses from locating or operating in their jurisdiction (36-405(b)(4));
- Impose licensing, operating, or other fees or requirements on a cannabis licensee that are *disproportionately greater or more burdensome than those imposed on other businesses with a similar impact* on the area where the cannabis licensee is located (36-405(B)(2)); or
- Establish distance requirements for dispensaries *greater than*:
 - 500 feet from a school, playground, library, or public park (36-410(b)(1));
or
 - 1,000 feet from another licensed dispensary (36-410(b)(2)).

The Act, including the provisions establishing reasonable limits on local zoning authority, were passed overwhelmingly by the House (102-35) and Senate (32-12).

Yet, in the interim, local governments across the State adopted ordinances that unduly burden cannabis businesses (e.g., prohibiting field cultivation, which is 10 to 20 times less expensive than indoor growing; establishing a moratorium on cannabis licensing; limiting cannabis businesses to industrial areas far from population centers; prohibiting the sale of cannabis accessories or clothing; and requiring cannabis dispensaries to obtain a minimum of one (1) acre of land, while restricting the retail facility to a size of 10,000 sq. ft.), or exceed the maximum distance requirements established under State law (e.g., prohibiting a licensed dispensary from being located within 2,000 feet of school, park, or another licensed dispensary).

Statutory License Limits and Distribution of Licenses Across the State

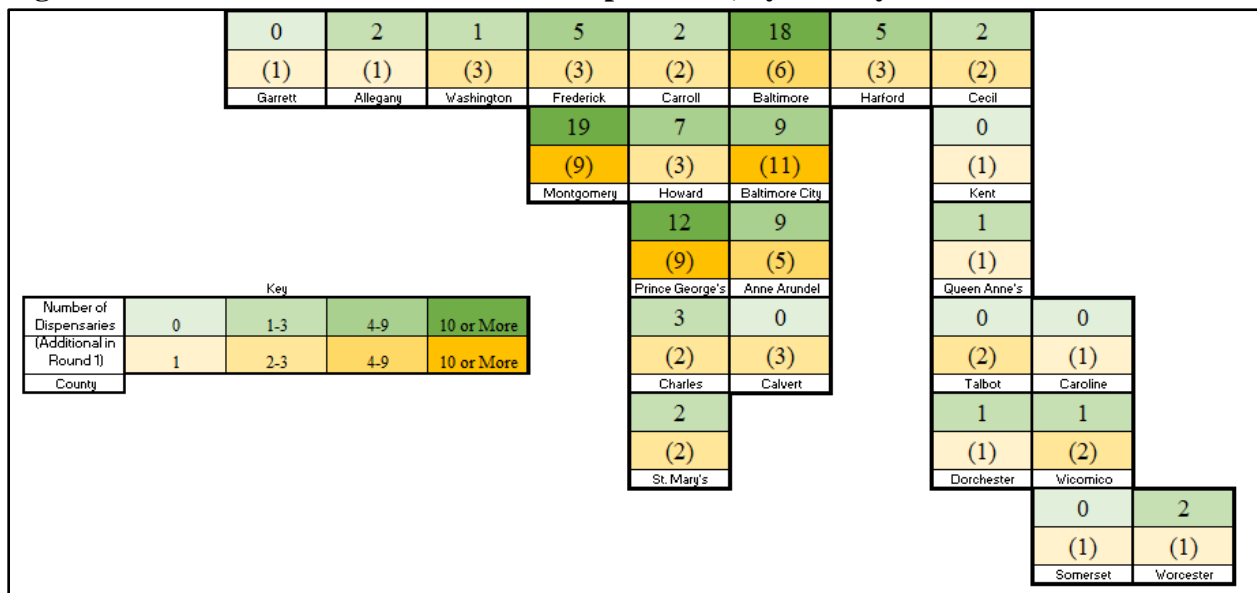
The General Assembly considered cannabis legalization over multiple legislative sessions and spent significant time and resources developing a cannabis regulatory structure and licensing system that seeks to reduce or eliminate the illicit market, provide broad access for adults to safer, legal, tested cannabis, and protect public health and safety. Accordingly, the number of cannabis dispensary licenses permitted to operate in the State is (1) limited in statute, (2) based on a balance of market and public health and safety factors, (3) significantly lower than the number of retail establishments permitted for alcohol or tobacco, and (4) distributed across the State based on population and market demand in a jurisdiction.

In 2023, the House Cannabis Referendum and Legalization Workgroup commissioned a third-party demand study on the potential size of an adult-use cannabis market in Maryland. Based on modeling across 20 legal cannabis states and Maryland-specific cannabis consumer survey data,

the demand study estimated that 300 cannabis dispensaries statewide would be “an optimal number of dispensaries to shift consumption from illicit markets to the adult use market without adding notable public health risks.”² The General Assembly adopted the optimal number of dispensaries, 300, as the maximum number and directed the MCA to award licenses in a manner that encourages a balanced geographic distribution based on population and market demand.

Figure 1 shows the distribution of dispensary licenses by county adopted by MCA. The top figure in each box is the number of medical cannabis dispensaries awarded to each county, and the bottom figure (in parentheses) is the maximum number of awards in the upcoming licensing round. The median number of additional dispensary licenses that may be awarded to each county is two (2). A total of only five (5) counties, including Baltimore City, may receive 5 or more dispensary licenses in the upcoming licensing round, and based on county population estimates the awards will result in an average of 1 additional dispensary per 100,000 residents across these jurisdictions.

Figure 1. Number of Licensed Cannabis Dispensaries, by County.



The number of grower licenses is also limited in statute, but the distribution of these licenses is by region rather than county. In the upcoming licensing round a maximum of four standard grower licenses and 6 micro grower licenses (limited to 10,000 sq. ft. of indoor canopy or 40,000 sq. ft. of outdoor canopy) may be awarded in each region. This means that a maximum of 16 standard grower and 24 micro grower licenses will be awarded *statewide* in this licensing

² Future Adult Use Cannabis Demand & Predictive Modeling: A Behavioral Economic Study, Cannabis Public Policy Consulting, Dr. Michael Sofis, PhD and Mackenzie Slade, MPH (January 5, 2023), available at https://mgaleg.maryland.gov/meeting_material/2023/scr%20-%20133174234517847255%20-%20Market%20Study%20Report_01052023.pdf.

round. See **Table 1** below for a complete breakdown of the regions and the maximum number of awards in each region.

Table 1. Distribution of Grower, Processor, and Micro Dispensary Licenses, by Region.

Eastern Region: Caroline, Kent, Queen Anne's, Talbot, Dorchester, Somerset, Wicomico, and Worcester Counties			Southern Region: Anne Arundel, Prince George's, Calvert, Charles, and St. Mary's Counties		
	Current Number	After Round 1		Current Number	After Round 1
Standard Growers	4	8	Standard Growers	3	7
Standard Processors	5	13	Standard Processors	4	12
Micro Growers		6	Micro Growers		6
Micro Processors		6	Micro Processors		6
Micro Dispensaries		2	Micro Dispensaries		2
Central Region: Baltimore, Harford, Howard, and Cecil Counties, and Baltimore City			Western Region: Carroll, Frederick, Montgomery, Allegany, Garrett, and Washington Counties		
	Current Number	After Round 1		Current Number	After Round 1
Standard Growers	4	8	Standard Growers	7	11
Standard Processors	4	12	Standard Processors	6	14
Micro Growers		6	Micro Growers		6
Micro Processors		6	Micro Processors		6
Micro Dispensaries		2	Micro Dispensaries		2

Number of Dispensary Licenses Compared to Alcohol Retailers

Opposition to HB 805 has stated that by not allowing local governments to zone cannabis dispensaries in a more restrictive manner than alcohol retailers, dispensaries will become as concentrated as liquor stores in certain communities. This is simply not true.

First, the number of on/off premises alcohol retailers statewide (6,500) is more than 20 times the maximum number of cannabis dispensary licenses authorized under law (300), and more than 30 times the number of dispensary licenses that may be awarded statewide after the upcoming licensing round (176). The number of beer and wine or beer, wine, and liquor stores statewide alone (more than 1,500) is almost 9 times the number of dispensary licenses that may be awarded statewide after this licensing round. The significant disparity between the number of alcohol retailers and cannabis dispensaries is also present in each county. For example, Baltimore County has a 30 to 1 ratio of alcohol retailers (nearly 800) to cannabis dispensaries (18 currently operating and up to 6 licenses available in the next round). Likewise, in Prince George’s County there are more than 600 retail alcoholic beverages licenses, of which more than 200 are beer and wine or beer, wine, and liquor retail licenses. This compares to a total of 12 cannabis dispensary licenses currently authorized in the county, and a maximum of 9 additional licenses in the upcoming licensing round. Even if MCA issues the maximum number of dispensary awards (9), beer, wine, and liquor licenses will still outnumber cannabis dispensaries in the county by a ratio of more than 10 to 1.

Second, as referenced above, unlike with alcohol or tobacco retailers, the State has established distance requirements between a licensed dispensary and a school, childcare facility, public park, playground, or library, or between two licensed dispensaries. These distance requirements will prevent areas from being densely concentrated with cannabis dispensaries and help ensure fair distribution of dispensaries across the State and within each county. In addition, HB 805 proposes to extend these distance requirements to include pre-existing places of worship, which will provide further protection for local communities.

The Growing Problem

HB 805 also proposes zoning protections for outdoor cannabis cultivation. Specifically, the bill would prevent local governments from adopting zoning requirements for outdoor cannabis cultivation operations that are more restrictive than historical zoning requirements for outdoor hemp cultivation. This provision was drafted in response to several local governments banning outdoor cultivation within their jurisdiction, requiring licensees to operate growing facilities within industrial areas, or attaching undue burdens to a cannabis grow license. For example, Carroll County prohibits the outdoor growing of cannabis anywhere in the county; Somerset County requires any cannabis-related facility to operate within an industrial zone, including growing facilities; and Cecil County requires a cannabis grower to hold at least 10 acres of land (despite micro licenses being capped under State law at one acre), prohibits field cultivation, and limits growing facilities to industrial zones.

Indoor facilities are significantly more expensive to construct and operate than outdoor farms, and much more energy intensive.³ Yet, local governments are increasingly forcing cannabis to grow indoors or grow in areas where field cultivation is extremely difficult or not possible. In contrast, local governments have by and large allowed field cultivation of hemp, which is produced by the same *Cannabis sativa L.* plant (and produces the same odor) as cannabis, without any restrictions.

MCA understands that local opposition to outdoor cannabis growing operations largely stem from security concerns. While perhaps well-intentioned, these security concerns are misplaced. MCA regulations require robust security requirements for outdoor growing operations, including security and privacy fencing, lighting, continuously monitored 24-hour video surveillance of the facility perimeter, fencing, and gates, and on-site security to prevent unauthorized entry ([COMAR 10.62.10.03](#)). Based on conversations with the Maryland Municipal League (MML) and the Maryland Association of Counties (MACo), MCA understands that these security provisions may adequately address local security concerns and is supportive of any efforts to codify these regulatory requirements.

³ A recent report from Massachusetts indicates that indoor cultivation facilities account for upwards of 10 percent of all industrial electricity consumption in the state. *See* Indoor cannabis grow centers draining electricity, Worcester Business Journal, June 2, 2021, available at <https://www.wbjournal.com/article/indoor-cannabis-grow-centers-draining-electricity>.

Zoning Challenges Faced by Initial Medical Licensees

On December 8, 2016, the Maryland Medical Cannabis Commission issued 102 pre-approvals for medical dispensary licenses. It took 1.7 years before half (51) of these dispensaries were able to open their doors, and 3 years or longer for more than one-quarter (28) of dispensaries to become operational. Challenges with local zoning and planning were overwhelmingly the driving force behind these delays.

Prince George's County provides an example of the deleterious effects that local zoning and planning requirements can have on cannabis businesses. In Prince George's, the Medical Cannabis Commission awarded a total of 14 medical cannabis dispensary pre-approvals in 2016. Today, there are only 9 operational dispensaries in the county. Thirty-six percent of the original dispensary licenses awarded have yet to open in the county. A total of 3 additional dispensaries remain in pre-approval, unable to find a location that complies with county zoning and planning requirements more than 7 years after their initial award, 1 dispensary had their pre-approval rescinded due to inability to make good faith progress to become operational as a result of zoning challenges, and 1 petitioned the Commission to transfer out of the county due to a lack of properties that complied with planning and zoning requirements. Without HB 805 clarifying the parameters of local zoning authority over cannabis businesses, the experience of these businesses in Prince George's County will likely be replicated across the State.

“Unduly Burden”

In the interim, MCA received dozens of inquiries from local governments asking for clarification on the term “unduly burden,” which is used in §36-405. The term is not defined in the Alcoholic Beverages and Cannabis Article, and absent a definition, local governments have struggled to determine whether certain planning and zoning measures are permissible under State law. Overall, these inquiries were well-intentioned, with local officials seeking to understand the zoning provisions in the Cannabis Reform Act, and what steps they could lawfully take to regulate these businesses in their jurisdiction. However, these questions, and many of the resulting ordinances passed across the State, highlight the need to clarify the zoning and planning provisions codified in §§36-405 and 36-410, and the importance of HB 805 to a successful and equitable cannabis industry in Maryland.

Moving Forward

As the State agency primarily tasked with implementing a safe, accessible, and equitable cannabis industry, MCA appreciates the challenges facing local governments that are seeking to balance the economic opportunities of cannabis legalization with its accompanying health and public safety concerns. MCA has worked closely with MML and MACo to identify solutions to the zoning challenges that are at the heart of HB 805 and commends their efforts to craft a consensus approach that balances economic, equity, and health and public safety interests. We are

committed to continuing to work with the sponsor, committee, and all stakeholders to clarify the scope of “reasonable zoning requirements” and “unduly burden” in a manner that is fair and consistent with the legislative intent of the Cannabis Reform Act.

I hope this information is useful. If you would like to discuss this further, please contact me at (410) 487-8069 or william.tilburg@maryland.gov or Andrew Garrison, Chief of the Office of Policy and Government Affairs at (443) 844-6114 or andrew.garrison@maryland.gov.

Sincerely,

A handwritten signature in blue ink that reads "William Tilburg". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Will Tilburg, JD, MPH
Director, Maryland Cannabis Administration

cc: Members of the House Economic Matters Committee