

CANNABIS CONTROL COMMISSION

**October 20, 2020
10:00AM**

Remote Participation via [Microsoft Teams Live](#)*

PUBLIC MEETING MINUTES

Documents:

[Public Comment on Proposed Delivery License Regulations – Part 1](#)
[Public Comment on Proposed Delivery License Regulations – Part 2](#)
[Public Comment on Proposed Delivery License Regulations – Part 3](#)

In Attendance:

Chairman Steven Hoffman
Commissioner Jennifer Flanagan
Commissioner Britte McBride
Commissioner Shaleen Title

Minutes:

1) Call to Order - 0:15

- The Chairman recognized a quorum and called the meeting to order.
- The Chairman gave notice to the public that the meeting is being recorded.
- The Chairman thanked Matt Giancola, Director of Government Affairs and Policy, for his work managing the remote public meeting.

2) Chairman's Comments and Updates – 0:54

- The Chairman gave an overview of the agenda and the regulatory process to date and next steps, including changes to the draft regulations resulting from the policy discussions at this meeting. .
- The Chairman thanked the public for their extensive and well-reasoned comment on the regulations.
- The Chairman noted that the Commission has reviewed all of the comment and has collectively identified 23 policy points of discussion, noting that the Commission will be voting on policy, not final draft regulations. The commission will then vote on final delivery policy.



3) Regulatory Policy Discussion on Delivery

a. Name for License Delivery Types – 4:30

- The Chairman described the topic.
- Commissioner Title proposed new names for each of the delivery licenses. Commissioner Title said that these suggested names are in light of public comment and intended to be in line with the current license names such as Marijuana Retailer, Marijuana Cultivator, and Marijuana Transporter. Commissioner Title proposed changing “Wholesale Delivery Licensee” to “Marijuana Delivery Operator” and changing “Limited Delivery Licensee” to “Marijuana Courier.”
- Commissioner McBride said she was fine with the name changes but offered a friendly amendment to include the word “limited” in the name of the license, to indicate the limitations inherent in the activities in which each of these license types can participate.
 - Commissioner Title asked if that distinction could be made in the definition, rather than the name of the license.
 - Commissioner McBride accepted that suggestion.
- Commissioner Title moved to change the name of “Wholesale Delivery Licensee” to “Marijuana Delivery Operator” and to change the name of “Limited Delivery Licensee” to “Marijuana Courier,” and to include in the definition of both of those license types that it is a limited delivery license type.
- Commissioner McBride seconded the motion.
- The Commission unanimously approved the motion.

b. Changing language with respect to Substance Abuse Disorders. – 8:57

- The Chairman noted this was a suggestion from the Department of Public Health.
- Commissioner Flanagan noted that the revision does not change the intent of the regulatory provisions, but updates terminology. Instead of “Substance Abuse” it will read “Substance Use Disorder.” The revision also includes information with respect to the Substance Abuse Hotline, which is a resource to folks who may be struggling with substance use issues. Commissioner Flanagan noted the importance of making this information available.
- Commissioner Flanagan moved that 935 CMR 500.146(5)(g) read “facts regarding substance use disorder signs and symptoms, referral information for substance use disorder treatment programs, and the telephone number for the Massachusetts Substance Use Helpline”
- Commissioner Title seconded the motion.
- The Commission unanimously approved the motion.

c. Ownership and Control Limitations with respect to Third Party Technology Providers [reference: several comments] – 10:57

- The Chairman described the topic.



- Commissioner McBride noted that there were quite a few comments from the public identified a concern over the potential ability for Third-Party Technology Platforms to monopolize or exercise outsized influence on the market through ownership or control of delivery licensees. Commissioner McBride, therefore, believed that it would be wise to craft language limiting the ability of Third-Party Technology Platforms from gaining too much ownership/control over the market.
- Commissioner Title asked for clarity around the meaning of financial interest, including any payment, such as basic delivery services.
 - Commissioner McBride confirmed that any arrangement, including a Delivery Agreement or other agreement for services would deem a Third-Party Technology Platform to be an Entity with Direct Control over a delivery licensee.
- Commissioner McBride moved to amend 935 CMR 500.002 by inserting at the end of the definition of Persons or Entities Having Direct Control, the following words: “(f) A Third Party Technology Platform Provider that possesses any financial interest in a Delivery License, including but not limited to, a Delivery Agreement or other agreement for services. And, further, that the definition of Third-party Technology Platform Provider is amended by adding at the end of the definition the following sentence: “A Third-Party Technology Platform Provider with a financial interest in a Delivery License shall be considered a Person or Entity Having Direct Control.” And, further, that 935 CMR 500.050(1)(b) be amended by striking out the existing clause (6) and inserting in place thereof the following: “(6) Limitations on the Number and Type of Licenses. a. No Person or Entity Having Direct or Indirect Control shall be granted or hold more than a combined total of three Marijuana Retailer Licenses and/or Delivery Licenses. b. No Third Party Technology Provider that is a Person or Entity with Direct Control shall be granted, or hold, more than one Delivery License.”
- Commissioner Flanagan seconded the motion.
- The Commission unanimously approved the motion.
- Commissioner Title noted the importance of the Commission’s role as a source of information, both with respect to ensuring ownership and control limits are not violated, but also ensuring that Consumers know the difference between regulated and illicit delivery companies. Commissioner Title noted that other states have sited the confusion between licensed delivery companies and those operating in violation of the law. Commissioner Title indicated this may be a longer discussion to be had and that there is already a commitment by the Executive Director to ensure transparency and that the Commission is a reliable source of information but wanted to codify in the regulations a practice already undertaken by the Commission to ensure its continued practice, unless the Commission amends the regulations.
- Commissioner McBride expressed her support for this motion and believes the information would be extraordinarily helpful. Commissioner McBride also noted that licensees are required to include



their license number on their web page to reduce such confusion and believes Commissioner Title's motion compliments that well.

- Commissioner Title moved to amend 935 CMR 500.103 by adding subsection (5) that reads: "the Commission shall maintain a publicly available and searchable source of information about all operating licenses, including Delivery Licensees, on its website."
 - Commissioner McBride seconded the motion.
 - The Commission unanimously approved the motion.
- d. Include limits on number of Marijuana Delivery Operator Licenses that may be held, to prevent monopolization of market – 19:54
- The Chairman gave an overview of the topic and comments received from the public. The Chairman expressed his hope that the market would serve as a check on dominant market players but said he could see circumstances that would allow a limited number of players to crowd out smaller business. The Chairman therefore indicated that it may make sense to establish license caps for Marijuana Delivery Operator Licenses, but to include a requirement to reevaluate those limits down the line if the Commission determines that they are no longer necessary to encourage participation by businesses of all sizes.
 - The Chairman therefore suggested limiting Marijuana Delivery Operator Licenses to one license per person/entity, ensuring that delivery vehicles are only carrying product associated against a specific order, and not extra product in anticipation of future orders, and including specific language with respect to reviewing regulations and guidance to determine whether these provisions have been effective and are still necessary to limit market dominance.
 - Commissioner Flanagan noted her general concern about delivery. Commissioner Flanagan also noted that the delivery licenses, and the structure the Commission has established, is targeted at righting the wrongs of marijuana prohibition and ensure inclusion in the market, and therefore expressed concern that a 1 license cap may be too limiting, especially when compared with the overall limit of 3 licenses for other license types, to still encourage the benefit to Economic Empowerment Applicants and Social Equity Participant owned businesses.
 - The Chairman recognized Commissioner Flanagan's concern and noted that there was a similar cap on microbusinesses and that the cap of a single license would not limit the size of such licensee, in terms of warehouse square footage or number of delivery vehicles. Therefore, the Chairman did not believe the cap limit would preclude anyone from building a successful business but worries about an operator being able to dominate the market.
 - Commissioner Title echoed Commissioner Flanagan's concern that a single license is too restrictive. If someone is limited to one license, they're going to want it to be centrally located to cover as much of the Commonwealth as possible with that one license. Commissioner Title also indicated that she believes the cap of one license is arbitrary, especially when other license types,



such as retail, cultivation, and product manufacturer, have the cap of three and therefore believes it should be three licenses.

- The Chairman indicated that what it means to be centrally located could mean different things based on regions, so it would allow different businesses to cover different parts of the Commonwealth and therefore set up where they can be successful. The Chairman went on to explain that because the mobility of a delivery licensee allows them to cover a much larger geographic area, compared with retailers which are stationary, he believes the license cap should be lower for delivery licensees. The Chairman did note that there would not be size restrictions on the one license as opposed to restrictions on other licensees.
- Commissioner McBride acknowledged the tension between creating an equity pathway and preventing market dominance by a small number of players. Commissioner McBride expressed her view that, recognizing this tension, that a license cap, of the suggestions that came out of public comment, was the best option, especially given the differences between a Delivery Operator and a Retailer. Commissioner McBride said that part of the comfort with that approach is the determination to study the market and return to the decision in a few years, which is consistent with the Commission's data driven approach to regulation.
- The Chairman described his suggestion that the Commission should study how the market evolves at least one year after the initial certificate to commence operations of a Delivery Operator to ensure both that the equity goals of the delivery regulations are being met and that there is not market domination by any delivery licensees.
- The Chairman noted that a year timetable may not be the right time-frame, but he believes it should be at least a year from the date of the first delivery licensee commences operation. The Chairman noted this type of explicit declaration that the Commission will examine the issue is in line with its approach to the exclusivity period for delivery and social consumption.
- Commissioner McBride expressed that one year may be too short, given how quickly a year can go by, so suggested that the appropriate time frame would be 15 months to two years.
- Commissioner Flanagan echoed Commissioner McBride's assessment and cited public comment that the three year exclusivity period was insufficient to measure the viability of a business. Therefore, Commissioner Flanagan believes more time would be needed to allow the industry to settle into normal operations before the Commission changes the requirements. Commissioner Flanagan also noted that the composition of the Commission is certain to change in that time period, so it may make sense to allow a newly constituted Commission more time before they have to reassess the delivery market.
- Commissioner Title indicated it may make sense to put a time restriction on the time it will take to conduct the study, as it may impact the Commission's consideration of whether to extend the exclusivity period.
- The Chairman suggested a six month window to complete a study of the delivery market.



- The Chairman next raised the topic of the inventory contained in a vehicle, and the possibility that a delivery licensee could place vehicles with surplus inventory for orders it anticipates receiving, and the role that could play in dominating the market.
- Commissioner McBride suggested addressing this concern by limiting the inventory in a delivery vehicle to a maximum value of \$10,000 and that all inventory must be associated with a specific Individual Order.
- Commissioner Flanagan supported these restrictions and supported clearly spelling them out in the regulations.
- The Chairman recapped the three suggested changes and his belief that together they would limit monopolization or market dominance by only a few players.
- With respect to the license cap, Commissioner Title said it makes sense to her to looking at retail and see what the highest grossing retailer and use that as a benchmark. Commissioner Title asked whether this would apply to each wholesaler and courier model.
 - The Chairman suggested that the limits were intended to apply to the Delivery Operator only, given a Delivery Courier can only deliver orders that originate through a retail location.
 - Commissioner Title said she thinks it makes sense to have the same limits for both models, because it creates unfair competition between delivery operators and couriers working with Retailers, who could in turn dominate the market.
 - The Chairman said that the motivation for having a limit is to make sure there are as many participants as possible in this space.
- Commissioner Title asked whether it was a total of 3 licenses of any combination of retailer, wholesaler, or courier licenses.
 - The Chairman confirmed this.
 - In that case, Commissioner Title said that if there is a total cap of 3 licenses, then only one of them could be a Delivery Operator *or* a Delivery Courier license to place the same restrictions on Couriers and Operators, noting still, however, that she supported allowing more than one delivery license.
- Commissioner Title talked through the practicalities of obtaining a license, in particular obtaining a property that is properly zoned and subsequently executing an HCA, and how those limitations may cap the size of a warehouse or vehicle fleet and therefore warrant the ability to obtain a second delivery license.
- Commissioner Flanagan asked if limiting the number of licenses hurts the equity mission of the wholesale model, citing the feedback received from the public that there wasn't sufficient opportunity for small and equity businesses. Commissioner Flanagan expressed her concern that the Commission established the Delivery Operator License for the purpose of entry into the cannabis market by small and equity businesses and limiting delivery licensees to a single license



cuts against that mission. Commissioner Flanagan expressed her concern that the Commission, in creating a license cap, may be over prescriptive, and in turn hurting the folks it is seeking to benefit.

- The Chairman expressed his agreement with Commissioner Flanagan that the goal is to support equity, and his view that the limits on the number of licenses furthers that by opening the market up to as many players as possible, but should not be construed as trying to preserve retailers market share.
- Commissioner Flanagan acknowledged the Chairman's aims and raised the issue of the difficulty equity applicants have raising capital and whether limiting the license numbers helps or impedes that, noting a feeling of being conflicted, but would be open to a cap of 2 delivery licenses.
- Commissioner McBride expressed that these licenses are meant to advance equity and see how market evolves, but this is meant to ensure that there are no dominant players, even if those dominant players are equity program members, because dominant players can crowd out other participants.
- Commissioner Title expressed support for the comments of Commissioners Flanagan and McBride. Commissioner Title expressed concern that the market players with the most centralized location and/or largest warehouse will have a greater chance of dominating the market, but thought increasing the cap to 2 might allow others with smaller warehouses at farther apart locations could balance against not having the largest or most centrally located warehouse.
- Commissioner Title suggested ensuring clarity that the mix of licenses could include two Delivery Operator Licenses *and/or* Delivery Courier Licenses.
- Commissioner McBride confirmed this was the intent of the language and that further clarification was acceptable in her view.
- The Chairman moved to modify the 500.050(1)(b)6. to say that no Person or Entity Having Direct or Indirect Control can be granted or hold a combination of three Marijuana Retailer and/or Licenses, provided that of those three, no more than two can be Delivery Only Licenses.
- Commissioner McBride seconded the motion.
- The Commission unanimously approved the motion.
- The Chairman moved that two years from the date that the first Delivery Operator Licensee receives a certificate to commence operations, the Commission or its designee shall commence, and complete within six months, an evaluation of the development of the cannabis delivery market in Massachusetts, which may include the competitiveness and concentration in the market and any other matter determined by the Commission. The Commission may take any action, including, but not limited to, issuing regulations or guidance, it deems necessary to address issues with market development and concentration. Commissioner Title asked that the Study would be completed within four months of commencement of the study.
- Commissioner Flanagan seconded the motion



- The Commission unanimously approved the motion.
 - Commissioner McBride moved to amend 935 CMR 500.145(h) by inserting, after the number “\$10,000”, the following words: “and each Marijuana Product shall be associated with a specific Individual Order”. And, further, that 935 CMR 500.145(2)(d) is amended by inserting after the word “only” the following words: “acquire from a Marijuana Retailer and”. And, further, that 935 CMR 500.145(2)(e) is amended by inserting after the word “only” the following words: “acquire from their inventory at the Marijuana Establishment premises and”. And, further, that 935 CMR 500.145(3)(d) is amended by inserting after the words “only” the following words: “acquire from their inventory at their Warehouse and deliver”.
 - Commissioner Flanagan seconded the motion.
 - The Commission unanimously approved the motion.
 - Commissioner Title asked a clarifying question with respect to the expectation is that if, after the market study, it is discovered that market domination is occurring, then the Commission would consider additional licensing caps.
 - The Chairman said yes, but if, in the inverse, the market has proven not to have these issues, that the Commission would reduce caps.
- e. Clarification of what is allowed for markings on vehicles (RMV language) [internal request, Prince Lobel comments] – 1:11:50
- Commissioner McBride gave an overview of the topic.
 - Commissioner McBride moved that 935 CMR 500.105(13)(c)(3) be amended by striking out the clause in its entirety and replacing it with the following clause: 3. Any vehicle used to transport or deliver Marijuana or Marijuana Products must comply with applicable RMV requirements, but may not include any additional external marking that indicate the vehicle is being used to transport or deliver Marijuana or Marijuana Products. And, further, that 935 CMR 500.145(6)(d) as included in the Draft Regulations be amended by striking out the clause in its entirety and replacing it with the following clause: (d) Any vehicle used to transport or deliver Marijuana or Marijuana product must comply with applicable RMV requirements, but may not include any additional external marking that indicate the vehicle is being used to transport or deliver Marijuana or Marijuana Products.
 - Commissioner Title supported this indicated that it addressed, and therefore rendered moot, one of the points she raised for discussion relating to consistency.
 - Commissioner Title seconded the motion.
 - The Commission unanimously approved the motion.
- f. Clarification on imposition of taxes (DOR language) [internal request and reference: MMA comments] – 1:15:15
- Commissioner McBride gave an overview of the topic and reviewed the specific language she would include in the motion.



- Commissioner Title indicated her shock that this topic needed to be clarified but expressed her support.
- Commissioner McBride said this is out of an abundance of clarity and to message outward, both to potential licensees and municipalities that may have a misconception, what the tax implications of these license types would be.
- Commissioner McBride moved that 935 CMR 500.050(10) Marijuana Delivery Operator Licenses be amended by inserting, after clause (b), the following clause: (c) Notwithstanding that a Marijuana Delivery Operator License is not considered to be a Marijuana Retailer as defined under 935 CMR 500.002 or authorized to engage in permitted activities under 935 CMR 500.050 (8), but is authorized to sell Finished Marijuana Products directly to consumers, a Marijuana Delivery Operator Licensee shall register as a vendor with the Department of Revenue and collect and remit marijuana retail taxes in accordance with 830 CMR 64N.1.1: Marijuana Retail Taxes. And authorize the General Counsel to make changes consistent with these changes as applicable in other sections of the Regulations.
- Commissioner Title seconded the motion.
- The Commission unanimously approved the motion.
- Commissioner Title asked the Executive Director to discuss potential guidance for municipalities with respect to Delivery Licenses.
 - The Executive Director indicated that the guidance will be linked with the passage of the final regs. So once the regulations are promulgated, staff will focus on technological implementation and then propose guidance for the Commission's consideration perhaps in December or after the first of the new year. The Commission will also be available to municipalities and updating Frequently Asked Questions Documents.

The Commission took a 10 minute recess, returning at 11:40am. – 1:38:36

g. Repackaging and white labeling

- Commissioner Title gave an overview of the topic.
- Commissioner Title asked if anyone on the Commission changed their views on this topic.
 - Commissioners indicated that they have not changed their view.
- Commissioner Title confirmed her understanding of the limits on white labeling and repackaging and who was allowed to do either activity.
- Commissioner Title moved to add the topics of repackaging and white labeling to the study to see whether it is causing issues for licensees.
- Commissioner McBride seconded the motion.
- The Commission unanimously approved the motion.

h. Requirement for Two Drivers – 1:43:02



- Commissioner Title asked commissioners to indicate whether they have changed their stance based on public comment.
 - Commissioner McBride indicated she did not, but also echoed sentiments of municipalities have relied on these security provisions to give them comfort for allowing delivery in their jurisdiction.
 - Commissioner Flanagan echoed the municipal considerations Commissioner McBride made and also stated her belief that the two drive requirement is an economic sacrifice that has to be made for the sake of safety.
 - The Chairman indicated that he did not change his viewpoint.
 - Commissioner Title asked the Executive Director with respect to alternative security provisions, and whether the two driver requirement could be subject to an alternative security plan.
 - The Executive Director noted that the Commission’s regulations allow local Law Enforcement to comment on the alternative, which is not determinative, but a consideration.
 - The Executive Director noted requests for alternative security are considerations and are considered on a case-by-case basis, and there has to be an alternative safeguard.
 - Commissioner Title asked if there was a specific form for this process.
 - The Executive Director noted that the waiver request form can be used for that.
- i. Clarify that under security updates Retailers or MEs w/ Delivery Endorsements need to let host community know when planning to commence delivery [reference: MMA comments] – 1:49:39
- Commissioner McBride gave an overview of the topic.
 - Commissioner McBride moved to insert the following words at the end of 935 CMR 500.110(1)(q): “including the addition of plans to deliver directly to consumers in the case of a Marijuana Retailer or Marijuana Establishment with a Delivery Endorsement” So, it would read as follows: “935 CMR 500.110 Security Requirements (1) General Requirements. A Marijuana Establishment shall implement sufficient security measures to deter theft of Marijuana and Marijuana Products, prevent unauthorized entrance into areas containing Marijuana and Marijuana Products and ensure the safety of Marijuana Establishment employees, Consumers, and the general public. Security measures taken by the Licensee to protect the Premises, employees, Marijuana Establishment Agents, Consumers, and general public shall include, but not be limited to, the following:… (q) Sharing the Marijuana Establishment's security plan and procedures with Law Enforcement Authorities, including police and fire departments, in the municipality where the Marijuana Establishment is located and periodically updating Law Enforcement Authorities, police and fire departments, if the plans or procedures are modified in a material way, including the addition of plans to deliver directly to consumers in the case of a Marijuana Retailer or Marijuana Establishment with a Delivery Endorsement”
 - Commissioner Flanagan second the motion.
 - The Commission unanimously approved the motion.



j. Exclusivity Period for Delivery – 1:51:16

- Commissioner Title gave an overview of the topic.
- Commissioner McBride said that there are a lot of factors at play that are out of the control of the Commission that could impact when licensees will enter the delivery market, but it does make sense from an administrative perspective to tie the exclusivity period to the first Certificate to Commence Operations to Delivery Operator Licensees.
- Commissioner Title moved to make the exclusivity period for two years from the date that the first Certificate to Commence Operations to a Delivery Operator Licensee.
- Commissioner McBride seconded the motion.
- The Commission approved the motion by a vote of three in favor (McBride, Hoffman, and Title) and one against (Flanagan).

k. Clarification on which entities may sell branded goods. – 1:59:49

- Commissioner Title gave an overview of the topic.
- Commissioner Flanagan said she believes this is addressed in a recent draft change that will be voted on at an upcoming meeting and all Marijuana Retailers are allowed to sell Branded goods.
- Commissioner McBride said that it is also her understanding that that all Marijuana Retailers can sell branded goods.
- Commissioner Title said that she would raise this in a subsequent meeting if further clarification is needed.

l. Need to extend time Pre-Certification is valid for Delivery Operators because some towns may take a longer time to put zoning into place. Extend from 1 year to 2 years, or other appropriate time period. – 2:03:42

- Commissioner McBride gave an overview of the topic.
- Commissioner Title supported this change.
- Commissioner McBride moved that 935 CMR 500.101(2)(f)1. be amended by striking out the number “12” and inserting in place thereof the number: “24.”
- Commissioner Flanagan seconded the motion.
- The Commission unanimously approved the motion.

m. Possible restriction of ownership by alcohol distributors. – 2:05:50

- Commissioner Title gave an overview of the topic raised by public comment.
- The Chairman expressed his opinion that if alcohol distributors want to invest in becoming a Delivery Licensee, there are now requirements in place to protect against potential market domination by alcohol distributors.



- Commissioner Flanagan that she does not believe that any particular type of licensee should be restricted.
 - Commissioner McBride said she believes the Commission has established significant restrictions with respect to market domination to protect against this concern. Commissioner McBride echoed Commissioner Flanagan’s discomfort with singling out certain types of potential licensees.
- n. Clarifying of language with respect to Delivery Agreements compared with Wholesale Agreement.
– 2:09:27
- Commissioner McBride gave an overview of the topic.
 - Commissioner McBride moved that 935 CMR 500.120 (12)(j) be amended by striking out the words “Delivery Agreement” and inserting in place thereof the words: “Wholesale Agreement.” And further that 935 CMR 500.130(5)(l) be amended by striking out the words “Delivery Agreement” and inserting in place thereof the words: “Wholesale Agreement.”
 - Commissioner Flanagan seconded the motion.
 - The Commission unanimously approved the motion.
- o. Clarification that attempt or solicitation to violate ownership/control regulations constitutes grounds for suspension and revocation of license. – 2:11:36
- Commissioner Title gave an overview of the topic.
 - Commissioner Flanagan asked if the Commission already have this authority.
 - The Chairman also asked a similar question with respect to what additional authority this would create and what type of circumstances it might address.
 - Commissioner Title said the Commission likely does, but this change would explicitly spell out that the Commission has and would exercise this authority. Commissioner Title also described a scenario that this would apply to.
 - Commissioner McBride asked how attempt is defined.
 - Commissioner Title said the definition of attempt would be that a person had the specific intent of violating the regulations and taking an overt act into accomplishing that attempt but did not rise to the level of actually accomplishing the violation.
 - The Executive Director said that there would need to be a jurisdictional hook.
 - Commissioner Title just clarified that the attempt language would only apply to applicants and licensees, so would only apply to people and entities under the Commission’s jurisdiction.
 - Commissioner McBride noted the evidentiary burden of proving such offenses.
 - The Chairman said he did not feel comfortable assessing intent with respect to applicants.
 - Commissioner Title offered a compromise to make this only apply to those already licensed and leave applicants out of it.
 - The Chairman expressed he would not feel much more comfortable with assessing intent with respect to licensees.



- Commissioner Title reiterated that, like criminal offenses, these offenses would require an overt action to further the intent to violate the ownership and control limitations.
 - Commissioner McBride said that she is concerned there will be potential unforeseen consequences, though she supports the spirit of the regulations.
 - Commissioner Flanagan said that she believes the Commission has sufficient authority in this area, so does not see the need for the change.
 - Commissioner Title distinguished between existing relationships, which is currently spelled out and well enforced, but described circumstances brought to light relating to attempted ownership and control circumvention through equity applicants, and though those attempts were not successful due to the scruples of equity applicants, this language would act as a deterrent, so it does not take an equity applicant getting ensnared in one of these schemes to enforce on it. Commissioner Title also said that she feels, given the evidentiary burden of proving an attempt, the use of these provisions would be limited, and therefore are less likely to have unintended consequences.
 - Commissioner McBride said that she is having trouble drawing the distinction between a prospective business deal or an incubator program and an attempt to circumvent ownership and control issues. Commissioner McBride also went on to say that businesses need to be able to test the waters of what they can get in a business deal.
 - The Chairman shared his view that the addition was not necessary, but also that he did not believe the Commission should be trying to determine what is a predatory practice in business dealings.
 - Commissioner Title said that the language was not meant to capture incubator programs or to deem something predatory. Commissioner Title said, based on her legal and business background, she has a clear idea of the narrow circumstances to which this language would apply. Commissioner Title said she was open to suggestion on whether the language could be revised to be more narrowly tailored to those specific circumstances where a party only failed to violate the regulations because they couldn't get a second party to agree to the scheme.
 - Commissioner Flanagan said that in her view the current regulations would capture the scenario Commissioner Title is trying to address, so does not think the change is needed.
 - Commissioner McBride reiterated her concerns with respect to potential unforeseen consequences.
 - Commissioner Title said she would take this feedback into consideration and may revisit the topic in the future in light of this discussion.
- p. Incorporate clarifying language into definition of Delivery Courier Licensee to make clear that it is not a retailer but is subject to caps. [reference: Prince Lobel comments] – 2:37:00
- Commissioner McBride gave an overview of the topic.
 - Commissioner McBride moved that the definition of Marijuana Courier Licensee as included in 935 CMR 500.002 be amended by adding at the end the following sentence: "Delivery Courier Licensee shall not be considered to be a Marijuana Retailer under 935 CMR 500.002:



Definitions or 935 CMR 500.050: *Marijuana Establishments* and shall be subject to 935 CMR 500.050 (1)(b): *Control Limitations*."

- Commissioner Title seconded the motion.
- The Commission unanimously approved the motion.
- The Chairman asked for any additional topics.
- Commissioner Title noted a ministerial change needed to make the prohibition on Repackaging clear in the definitions consistent for each type of Delivery Licensee.
- Commissioner Flanagan noted how there are a lot of questions around delivery, and that public comment makes it clear that two strong lobbying efforts with opposing views on how the Commission should proceed. Therefore, Commissioner Flanagan believes there are too many outstanding issues to work through.
- Commissioner McBride said that Commissioner Flanagan's comments are well taken. Commissioner McBride said that, as with previous regulatory revisions, there are a lot of unknowns, though the Commission has honed its ability to foresee potential consequences. That being said, there has been clear intentionality for delivery to be a lower barrier entry way to the market for equity applicants, recognizing that in the industry as developed to date, very important compliance requirements have resulted in costs that price out certain market participants. Commissioner McBride expressed that, given her hope that the Delivery Licenses will make a substantial difference in furthering the Commission's equity mission and mandate and impacting the illicit market, it is important to not further delay the availability of those licenses and the intended positive impact for disproportionately impacted areas and communities.
- Commissioner Title expressed her pride with the work and thoughtfulness that went into the Delivery Licenses and thanked Commissioner McBride and her writing team that put a lot of work into the delivery regulations.
- The Chairman expressed his support for the comments of Commissioners McBride and Title. The Chairman also expressed his respect for Commissioner Flanagan's courage in expressing a minority viewpoint and sticking to her beliefs. The Chairman, noted, however, that the conversations held at this meeting gave him even greater confidence about moving forward with the delivery regulations. The Chairman said that over the years, the Commission has demonstrated the ability to draft workable regulations that support the establishment of an industry, protect public health, safety, and welfare, and help level the playing field for all users. Therefore, the Chairman stated that he does not support a delay in approving delivery regulations.
- Commissioner Flanagan moved to table the promulgation of regulations enabling delivery until January 2023.



- Commissioner McBride seconded the motion.
 - The Commission voted against the motion with one in favor (Flanagan) and three against (Hoffman, McBride, Title).
 - Commissioner Title asked the Executive Director if he had a general roll out time frame for these new licenses.
 - The Executive Director described the steps that will be required, including modifying current delivery application and establishing a new license, updating guidance's and FAQs, and it can be expected that the licenses would be ready for use within several months of promulgation of the regulations.
 - Commissioner McBride moved that the Commission, acting consistent with the authority to establish and provide for the issuance of additional types or classes of licenses to operate marijuana-related businesses as granted to it under General Law chapter 94G, section 4 (b), adopt the Draft Regulations relative to Delivery Licenses as further amended here today.
 - Commissioner Title seconded the motion.
The Commission approved the motion by a vote of three in favor (Hoffman, McBride, Title) and one against (Flanagan).
 - Commissioner Flanagan wanted to thank Commissioner McBride for the work of drafting the delivery regulations.
- 4) Next Meeting Date – 2:58:05
- The Chairman gave an overview of the tentative upcoming meeting schedule.
- 5) Adjournment – 2:58:42
- Commissioner Title moved to adjourn the meeting.
 - Commissioner Flanagan seconded the motion.
 - The Commission unanimously voted to adjourn the meeting.

