MUNICIPAL BEST PRACTICES FOR MARIJUANA HOST COMMUNITY AGREEMENTS

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**LEGAL AUTHORIZATION FOR HOST COMMUNITY AGREEMENTS**

**Massachusetts General Laws c.94G §3(d)**

“**A marijuana establishment or a medical marijuana treatment center seeking to operate or continue to operate in a municipality which permits such operation shall execute an agreement with the host community setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within the host community**”

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**HOST COMMUNITY AGREEMENTS**

<table>
<thead>
<tr>
<th>Adult Use Marijuana Establishments</th>
<th>Medical Marijuana Treatment Centers</th>
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<tbody>
<tr>
<td>• HCA is a prerequisite for completion of the state licensing process;</td>
<td>• No regulatory requirement for submission of HCA as part of state licensing/registration;</td>
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<tr>
<td>• Cannabis Control Commission will not process state license application until certification filed that HCA has been executed.</td>
<td>• “Letter of Support or Non-Opposition” must be provided as part of state licensing/registration;</td>
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<td></td>
<td>• Municipality has stronger bargaining position if HCA is negotiated prior to issuing the Letter of Support or Non-Opposition.</td>
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MUNICIPAL OBLIGATION TO NEGOTIATE AND EXECUTE HCAS

- G.L. c.94G, §3(d) does not impose a specific obligation on municipalities to execute agreements with all interested applicants.
- Refusal to execute HCA should not be used as a means of circumventing the prescribed procedures of G.L. c.94G, §3(a) for prohibiting/limiting adult use marijuana establishments through bylaw/ordinance.
- Municipalities may develop a set of criteria for screening applicants to establish a reasonable basis for granting or denying HCAs.
SCREENING POTENTIAL APPLICANTS

Option 1
Establishment of criteria for ongoing applicant evaluation
• Effective for communities that do not have limitations on the number of licenses or permits
• Allows for evaluation of a small number of applicants spread out over time
• Establishes threshold information required to begin negotiation

Option 2
Issuance of RFQ for comparative screening process
• Process allows for comparative vetting of multiple applicants
• Effective for communities with large number of applicants
• Allows for selection of most desirable applicants where municipality has imposed limitations on numbers

CRITERIA FOR SCREENING POTENTIAL APPLICANTS

Applicant Background Information
✦ Name of Business; documentation of business registration and certificate of good standing
✦ Proposed address for facility and proof of site control
✦ Evidence of compliance with local zoning and required buffers
✦ Names and resumes of executives and managers (e.g. CEO, CFO, COO, Director of Security) and individuals contributing significant capital to operation
✦ Evidence of no outstanding or unresolved criminal proceedings resulting in mandatory disqualification under 93S CMR 500.801
CRITERIA FOR SCREENING POTENTIAL APPLICANTS

Business Information

- Business Plan
- Evidence of financial backing/sufficient capitalization or investment to get business operational
- Proposed timeline and development plan
- Plan for employee staffing/local job creation and wage range
- Plan and source for maintaining marijuana product supply for retail sales operations

Municipal Impact

- Management and operations plan
- Security Plan (may be kept confidential)
- Traffic and parking plan
- Proposed building design and signage
- Plans for external nuisance mitigation (light, noise, emissions, odor, debris, solid waste disposal)
- Potential financial commitment to municipality
- Non-monetary inducements, incentives or other benefits to the municipality
**COMPARATIVE CRITERIA FOR SCREENING POTENTIAL APPLICANTS**

- Knowledge and understanding of licensing procedures
- Prior cannabis experience
- Quality of business plan
- Proposed development timeline
- Potential for job creation
- Community connection and local residency
- Parking and traffic management
- Financial commitments and other inducements
- Geographic diversity in proposed locations
- Provides opportunity for women-owned or minority-owned businesses

**SCREENING POTENTIAL APPLICANTS**

Examples of municipalities that have used application criteria/RFQ process

- City of Boston
- Springfield (medical)
- Salem
- Amherst
- Tyngsborough
- Winchendon
- Nantucket
Community Impact Fees

- Cannot amount to more than 3% of gross sales
- Term limited to 5 years
- Costs to the municipality must be documented and retained as public record

Community Impact Fee Considerations

- Costs and impacts cannot currently be ascertained;
- Most agreements currently include full 3%;
- Consider different fee structures for different types of uses – e.g. cultivation agreements calculated based on canopy size, not gross sales.

- Collection of fees may be annual or on other payment schedules (e.g. quarterly);
- Include provisions for late penalty;
- Provide for independent auditing at applicant’s expense;
- Address the 5 year limitation – reasonable renegotiation terms, including acknowledgment of costs that cannot be fully calculated

- Municipality’s ability to collect 3% long term depends on ability to track and document costs;
- Establish a tracking system – attribute employee time/costs of running system to CIF.
**TERMS OF HOST COMMUNITY AGREEMENTS**

**Additional Monetary Contributions**

- Does the statute allow for additional payments?
  - Statute does not expressly prohibit
  - Municipalities have broad contracting authority.
  - Most HCAs to date include additional contributions (charitable or community benefit)

- Are additional monetary contributions subject to the five year term?
  - G.L. c.94G §3(d) provides only that community impact fees are subject to a five year term.
  - Agreements may remain in effect for duration of the establishments existence.

- What is the Cannabis Control Commission position on additional monetary contributions?
  - Current position – CNB will not review or regulate HCAs
  - Recent report of CNB requests legislative clarification and potential oversight

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**LOCAL TAX OPTION**

- MGL c. 64N, Section 3 allows cities and towns to impose a local sales tax on the “sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the city or town” up to 3% of the total sales price.

- This is a local acceptance provision – requires a vote of the local legislative body (Town Meeting/City Council) to adopt.

- Local acceptance tax is specific to retail and is in addition to any funds collected as part of the HCA
### NON-MONETARY TERMS FOR HCAS

#### Examples of Non-Monetary Terms for HCA

<table>
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<tr>
<th>Term</th>
<th>Description</th>
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<tr>
<td>Local hiring preferences</td>
<td>(within confines of law).</td>
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<tr>
<td>Security review and cooperation with local law enforcement.</td>
<td></td>
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<tr>
<td>Commitment not to challenge or appeal building permit or other permit application fees or local charges</td>
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</tr>
<tr>
<td>Commitment to pay cost of consultants and legal counsel for purposes of negotiating agreements and overseeing permitting</td>
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<tr>
<td>Provisions addressing assignment, sublet or transfer of rights and obligations under agreement</td>
<td></td>
</tr>
<tr>
<td>Reservation of rights for other local boards, commissions, or department to carry out their respective powers and duties to decide upon and to issue, or deny applicable permits and other approvals</td>
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</tr>
<tr>
<td>Indemnification, defense and hold harmless municipality from any claims arising as a result of the permitting of the establishment.</td>
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#### Requirement for a community impact mitigation plan to be developed in connection with required Community Impact Hearing, and reviewed on an annual basis to address neighborhood concerns.

#### Annual Reporting on compliance

#### Annual inspections by Building Inspector, Police, Fire and Board of Health

#### Electrical use and renewable energy commitments

#### Waste and Water controls

#### Odor control technology

#### Re-opener Review clause – addressing more favorable terms in other similarly situated communities

#### Commitment not to challenge terms of HCA or legality of agreement

#### Community volunteer hours

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SOCIAL EQUITY AND ECONOMIC EMPOWERMENT APPLICANTS

Cannabis Control Commission is statutorily mandated to facilitate market participation for people from communities that have been disproportionately harmed by marijuana law enforcement.

Two programs established:

- Social Equity
- Economic Empowerment Priority Review

Municipalities have faced (unmerited) criticism that Host Community Agreements are a barrier to entry for social equity applicants.

No statutory obligation for municipalities to establish different criteria for social equity/economic empowerment applicants.

Some communities have taken a pro-active approach encouraging social justice/economic empowerment applicants:

- E.g. City of Somerville ordinance which prioritizes existing medical dispensaries and state-certified Economic Empowerment applicants or locally-owned retailers and co-ops.
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