

## **MUNICIPAL BEST PRACTICES FOR MARIJUANA HOST COMMUNITY AGREEMENTS**

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**THE LEADER IN PUBLIC SECTOR LAW**  
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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

### Adult Use Marijuana Establishments

- HCA is a prerequisite for completion of the state licensing process;
- Cannabis Control Commission will not process state license application until certification filed that HCA has been executed.

### Medical Marijuana Treatment Centers


- No regulatory requirement for submission of HCA as part of state licensing/registration;
- “Letter of Support or Non-Opposition” must be provided as part of state licensing/registration;
- Municipality has stronger bargaining position if HCA is negotiated prior to issuing the Letter of Support or Non-Opposition.

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## AUTHORITY TO NEGOTIATE HCAs

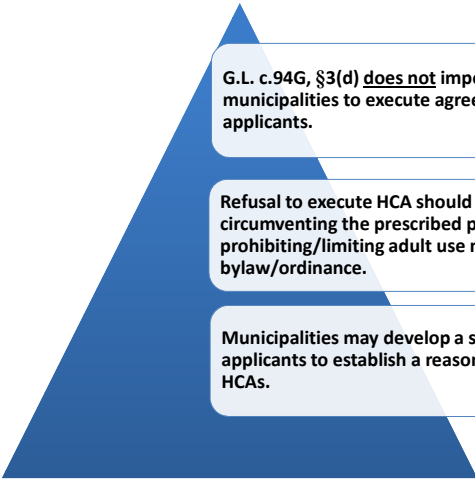
- Host Community Agreements must be executed by the municipal contracting authority.
- The entity or individual with contracting authority is dependent upon local charter or bylaw/ordinance

- 
- ❖ Board of Selectmen
  - ❖ Town Manager
  - ❖ City Council
  - ❖ Mayor

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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.

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SCREENING POTENTIAL APPLICANTS	
<b>Option 1</b> <b>Establishment of criteria for ongoing applicant evaluation</b>	<b>Option 2</b> <b>Issuance of RFQ for comparative screening process</b>
<ul style="list-style-type: none"> <li>• Effective for communities that do not have limitations on the number of licenses or permits</li> <li>• Allows for evaluation of a small number of applicants spread out over time</li> <li>• Establishes threshold information required to begin negotiation</li> </ul>	<ul style="list-style-type: none"> <li>• Process allows for comparative vetting of multiple applicants</li> <li>• Effective for communities with large number of applicants</li> <li>• Allows for selection of most desirable applicants where municipality has imposed limitations on numbers</li> </ul>

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CRITERIA FOR SCREENING POTENTIAL APPLICANTS
<p style="text-align: center;"><b><u>Applicant Background Information</u></b></p> <div style="border: 1px solid black; border-radius: 50%; padding: 20px; margin: 20px auto; width: 80%;"> <ul style="list-style-type: none"> <li>❖ Name of Business; documentation of business registration and certificate of good standing</li> <li>❖ Proposed address for facility and proof of site control</li> <li>❖ Evidence of compliance with local zoning and required buffers</li> <li>❖ Names and resumes of executives and managers (e.g. CEO, CFO, COO, Director of Security) and individuals contributing significant capital to operation</li> <li>❖ Evidence of no outstanding or unresolved criminal proceedings resulting in mandatory disqualification under 935 CMR 500.801</li> </ul> </div>

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## 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

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## CRITERIA FOR SCREENING POTENTIAL APPLICANTS

### 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

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## 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

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## SCREENING POTENTIAL APPLICANTS

### Examples of municipalities that have used application criteria/RFQ process

- ❖ City of Boston
- ❖ Springfield (medical)
- ❖ Salem
- ❖ Amherst
- ❖ Tyngsborough
- ❖ Winchendon
- ❖ Nantucket

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## TERMS OF HOST COMMUNITY AGREEMENTS

### 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

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## TERMS OF HOST COMMUNITY AGREEMENTS

### Community Impact Fee Considerations

Amount

- 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.

Terms

- 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

Documenting Costs

- 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.

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## 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

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## NON-MONETARY TERMS FOR HCAs

### Examples of Non-Monetary Terms for HCA

Local hiring preferences (within confines of law).

Security review and cooperation with local law enforcement.

Commitment not to challenge or appeal building permit or other permit application fees or local charges

Commitment to pay cost of consultants and legal counsel for purposes of negotiating agreements and overseeing permitting

Provisions addressing assignment, sublet or transfer of rights and obligations under agreement

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

Indemnification, defense and hold harmless municipality from any claims arising as a result of the permitting of the establishment.

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## NON-MONETARY TERMS FOR HCAs

### Examples of Non-Monetary Terms for HCAs

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

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## SOCIAL EQUITY AND ECONOMIC EMPOWERMENT APPLICANTS

- ❖ 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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