

BEST PRACTICES FOR LOCAL CONTROL OF MARIJUANA ESTABLISHMENTS

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LOCAL CONTROL OF ADULT USE MARIJUANA

Municipal role in the
licensing of
Marijuana
Establishments:

“Community Outreach
Meeting”

Host Community Agreement
Negotiations

Zoning/Permitting/Licensing

Community Outreach Meetings

CCC Regulations require an Applicant to hold a Community Outreach Meeting within six (6) months prior to submission of a license application to CCC

NOTICE REQUIREMENTS FOR COMMUNITY IMPACT MEETING

- ▶ Meeting must be advertised at least seven (7) calendar days prior to date of hearing
- ▶ Copy of meeting notice filed with town or city clerk, planning board, contracting authority for the municipality, and local licensing authority for adult use marijuana (if applicable)
- ▶ Copy of meeting notice must be sent to abutters

CONTENT OF COMMUNITY IMPACT MEETING

- ▶ Discussions of type(s) of Marijuana Establishment to be located at proposed address
- ▶ Security information
- ▶ Steps taken by Applicant to prevent diversion to minors
- ▶ Plan for positive community impact
- ▶ Information to demonstrate location will not be a nuisance
- ▶ Requirement for Q&A from community members to representatives of Marijuana Establishment

Community Outreach Meeting Best Practices

Establish a written local policy

- ❖ Make Community Outreach Meeting a prerequisite to HCA negotiations
- ❖ Provide applicants with municipal policy for use of Town-owned facilities (e.g. library, Town Hall)
- ❖ Address scheduling concerns -
 - ▶ Hold concurrent with other municipal meetings
 - ▶ Consider community access
 - ▶ Notify applicants of potential scheduling conflicts

Host Community Agreements

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”

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

WHAT IS THE 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.

HOWEVER . . .

- ▶ G.L. c.94G, §3(a) establishes prescribed procedures for prohibiting/limiting adult use marijuana establishments through bylaw/ordinance and ballot.
- ▶ HCA negotiation is not the proper mechanism for imposing limitations not otherwise established through the G.L. c.94G, §3(a).

Mederi, Inc. v. City of Salem

C.A. No. 2018-01878-D

- ▶ Count I - Mandamus to compel the City to negotiate an HCA
- ▶ Count II - Certiorari claim that the City acted arbitrarily and capriciously in refusing to enter into HCA negotiations

- ▶ Court found that HCA negotiation to decide among multiple interested applicants was a quasi-judicial, not a ministerial act and could be reviewed to determine whether the municipality acted arbitrarily or capriciously
- ▶ Court found that City of Salem did not act arbitrarily or capriciously because the City had:
 - ▶ Published guidelines for HCA applicants
 - ▶ Established a review committee
 - ▶ Identified favorable review criteria
 - ▶ Set forth the minimum expectations for any HCA it would sign
 - ▶ Followed the process it had established
 - ▶ Prepared a memorandum explaining its rationale

BEST PRACTICES FOR EVALUATING MARIJUANA ESTABLISHMENT APPLICANTS

- ▶ Establish and publish a transparent process for all Applicants to follow
- ▶ Determine the information you will require Applicants to provide
- ▶ Establish evaluation criteria for assuring base-line threshold of qualifications are met
- ▶ Ensure all applicants follow the same process
- ▶ Keep a written record

EVALUATING POTENTIAL APPLICANTS

Option 1

Establishment of baseline 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 935 CMR 500.801

CRITERIA FOR SCREENING POTENTIAL APPLICANTS

Business Information

- ❖ Business Plan (Market Analysis.; Organization Management; Sales Strategies; Funding Requirements; Financial Projections)
- ❖ 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 and benefits plans
- ❖ Plan and source for maintaining marijuana product supply for retail sales operations

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)
- ❖ Energy efficiency/renewable energy proposals
- ❖ 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 industry and licensing procedures
- ❖ Prior cannabis experience
- ❖ Quality of business plan
- ❖ Proposed development timeline
- ❖ Potential for job creation; quality of jobs
- ❖ Community connection and local residency
- ❖ Parking and traffic management
- ❖ Renewable energy plans
- ❖ Financial commitments and other inducements
- ❖ Geographic diversity in proposed locations
- ❖ Provides opportunity for social justice applicants

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

COMMUNITY IMPACT FEE CONSIDERATIONS - AMOUNT

- ▶ No data or models for current municipal impact costs
- ▶ Many agreements currently include full 3%
- ▶ Municipalities may consider different fee structures for different types of uses
 - ▶ Cultivation agreements calculated based on canopy size, not gross sales
 - ▶ Set cap on total impact fee based on anticipated revenues
 - ▶ Set sliding scale of fee percentage based on revenue

COMMUNITY IMPACT FEE CONSIDERATIONS - TERM

- ▶ Collection of fees may be annual or on other payment schedules (e.g. quarterly)
- ▶ Require upfront payment for customary permitting, peer review, legal fee
- ▶ Include provisions for late penalty
- ▶ Provide for independent auditing at applicant's expense
- ▶ Address the 5 year limitation on impact fees
 - ▶ Subject to reasonable renegotiation terms
 - ▶ Presumption of reasonableness for initial term of agreement

COMMUNITY IMPACT FEE - DOCUMENTATION OF COSTS

- ▶ G.L. c.94G, §3(d) - “Any cost to a city or town imposed by the operation of the marijuana establishment or medical marijuana treatment center shall be documented and considered a public record as defined by G.L. c.4, §7, cl.26.”
- ▶ 935 CMR 500.103(4)(f) - “A Marijuana Establishment shall submit as a component of the [CCC license] renewal application documentation that the establishment requested from its Host Community the records of any cost to a city or town reasonably related to the operation of the establishment, which would include the city’s or town’s anticipated and actual expenses resulting from the operation of the establishment in its community.”
 - ▶ Applicant must provide CCC the following:
 - ▶ copy of request, including the date
 - ▶ Substantive response(s) received; or
 - ▶ Attestation that no response was received
 - ▶ Request by applicant must quote language from G.L. c.94G,§3(d) re: public record

COMMUNITY IMPACT FEE - DOCUMENTATION OF COSTS

- ▶ What constitutes a cost to the municipality for purposes of G.L. c.94G, §3(d)?
 - ▶ Municipal administration expenses
 - ▶ Traffic intersection design studies
 - ▶ Public safety personnel overtime
 - ▶ Environmental impact studies (cultivation)
 - ▶ Substance abuse programming
 - ▶ Legal fees

COMMUNITY IMPACT FEE - DOCUMENTATION OF COSTS

- ▶ Municipalities should closely document any costs imposed by the operation of the marijuana establishment on the City or Town
- ▶ Establish a tracking system -
 - ▶ One municipal employee/department as point person
 - ▶ Require reporting of all employee time to single point person
 - ▶ Educate employees about need for reporting time/costs
 - ▶ Attribute employee time/costs of running system to the expenses
 - ▶ Include legal costs
- ▶ Maintain a separate tracking file for each establishment
- ▶ Files should be kept indefinitely
- ▶ All tracking records are public records
 - ▶ Anticipate applicant requests

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/non-profit or community benefit) authority

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: CCC is not currently reviewing or regulating HCAs
- CCC has requested legislative clarification and potential oversight
- Pending legislation to address this issue

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

SOCIAL EQUITY AND ECONOMIC EMPOWERMENT APPLICANTS

- ❖ Municipalities have faced 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 and City of Cambridge adopted ordinances prioritizing state-certified Economic Empowerment applicants or locally-owned retailers and co-ops.

ZONING FOR MARIJUANA ESTABLISHMENTS

ZONING BYLAWS/ORDINANCES

- ▶ Under G.L. c.94G, §3, municipalities may enact bylaws/ordinances for the following purposes:
 - ▶ “govern the time, place and manner of marijuana establishment operations” § 3(a)(1)
 - ▶ “limit the number of marijuana establishments in the city or town” § 3(a)(2)
 - ▶ “restrict the licensed cultivation, processing and manufacturing of marijuana that is a public nuisance” § 3(a)(3)
 - ▶ regulate signs, § 3(a)(4)
 - ▶ and establish civil penalties for violations, § 3(a)(5)

TIME PLACE AND MANNER REGULATIONS

- ▶ Marijuana Establishments may be regulated under existing use classifications:
 - ▶ *(e.g. marijuana retail may be treated as “retail” and allowed to locate where other retail uses are permitted)*
- ▶ Marijuana Establishments may be regulated under new or separate use classifications:
 - ▶ *(e.g. creation of a new use category for “Marijuana Cultivators”)*
- ▶ Municipalities may not interpret prohibitory bylaws/ordinances as excluding marijuana establishments.

BUFFER ZONES

Buffer Zone Requirements

Under the Act, a Marijuana Establishment may not be located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12 (measured from lot lines of impacted properties)

Municipalities may impose other buffer zones or minimum distance separation requirements between Marijuana Establishments and other sensitive land uses (e.g. parks, playgrounds, libraries, youth recreation facilities)

LIMITATION OR PROHIBITION

Pursuant to G.L. c.94G, §3(a), a municipality may do the following:

1. **Prohibit** one or more types of adult use marijuana establishments
2. **Limit** the number of adult use marijuana establishments by bylaw

Prohibition of one or more type of marijuana establishment, or limitations on retail below certain thresholds require the additional requirement of a ballot vote.

LIMITATION OR PROHIBITION



Municipalities may impose bylaw limitations on marijuana retail establishments amounting a number that is to 20% or higher than the number of package store liquor licenses issued

If a municipality imposes a limit lower than 20%, a ballot vote is required

Limitations can be imposed through adoption of a General Bylaw

EXPIRATION OF GRACE PERIOD FOR “NO” COMMUNITIES

- ▶ Communities with a majority “No” vote on Ballot Question 4 only had until December 31, 2019 to enact a bylaw banning or limiting marijuana retailers without the need for a ballot question.
- ▶ All bans or qualifying limitations will now require a ballot vote.
- ▶ Ballot vote is not required to lift a ban or increase a limit.

REPORTING ZONING BYLAW/ORDINANCE COMPLIANCE

Applicants must submit to the CCC documentation that a proposed site is compliant with the bylaws/ordinances in effect at the time of the application

Once application filed with CCC is deemed complete, the CCC will notify the municipality

The municipality has 60 days from date of correspondence from CCC to notify the CCC if the Applicant's proposed location is not in compliance with local ordinance/bylaw

If no communication is sent from the municipality, the Applicant will be deemed in compliance

TIMING OF LOCAL PERMITTING APPLICATIONS

- ▶ Many local Bylaws impose a special permit application requirement of requiring a Provisional License from the CCC prior to applying for local permits
- ▶ Due to long CCC licensing queue, applicants are seeking to waive Provisional License Requirement
- ▶ Special Permit Granting Authorities inclined to waive such requirements may need to condition approvals to protect local interests and ensure that applications approved the CCC do not deviate from plans approved by municipalities

LOCAL INITIATIVE EFFORTS TO REPEAL ZONING

- ▶ Valley Green Grow, Inc. v. Town of Charlton, No. 18 MISC 000483 (RBF), 2019 WL 1087930 (Mass. Land Ct. Mar. 7, 2019).
 - ▶ Town could have chosen to adopt a general bylaw.
 - ▶ It chose to enact a zoning bylaw amendment, which regulated recreational marijuana use through the traditional mechanisms of zoning, namely use districts and special permits.
 - ▶ Having permitted marijuana use through its zoning bylaw, the Town could only change or bar that use by amending the zoning bylaw.
 - ▶ It could not bar the previously allowed zoning use by a general bylaw.
 - ▶ *See*, Rayco Inv. Corp. v. Board of Selectmen of Raynham, 368 Mass. 385 (1975) (*Rayco*); Lovequist v. Conservation Comm'n of Dennis, 379 Mass. 7 (1979); and Spenthalhauer v. Town of Barnstable, 80 Mass. App. Ct. 134 (2011).

PERMITTING PROCESS - DRAFTING DECISIONS

- ▶ Require full disclosure and consideration of all operational aspects of proposed use
- ▶ Draft permit decision specific to submitted plans and require permit modification for deviation from original proposal
- ▶ Use peer review where necessary - e.g., traffic, odor control
- ▶ Carefully consider the review criteria of the Bylaw/Ordinance limitations imposed under Zoning Bylaws/Ordinances and impose reasonable conditions on operation
- ▶ For large-scale or impactful operations, consider conditioning permits with phased roll-out (e.g. appointment only; traffic control during peak hours) to manage impacts.

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