

CANNABIS LAW UPDATE: HOST COMMUNITY AGREEMENTS AND MUNICIPALITIES

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AN ACT RELATIVE TO EQUITY IN THE CANNABIS INDUSTRY

*CHAPTER 180 OF THE ACTS OF
2022*





The Act makes numerous changes to Massachusetts' marijuana laws, including those governing:

- ❖ Host Community Agreements (“HCAs”)
- ❖ Community Impact Fees
- ❖ Social Consumption Establishments
- ❖ Social Equity
- ❖ Taxation
- ❖ Role of Massachusetts Cannabis Control Commission (“CCC”)

Legislative Amendments

HCA's, Impact Fees and the CCC

Effective November 9, 2022



HOST COMMUNITY AGREEMENTS

- ▶ The Act substantially revises the regulatory oversight for and approval of HCAs, limits municipalities' ability to collect impact fees for anticipated costs, establishes penalties for municipalities that fail to, or improperly, document impact costs, prohibits an HCA from imposing other types of monetary commitments beyond community impact fees, and establishes a mechanism by which municipalities may waive the HCA requirement entirely

COMMUNITY IMPACT FEES

- ▶ While the Act does not eliminate the concept of a community impact fee, it does impose new and different requirements on host communities



THE ACT IDENTIFIES THE FOLLOWING REQUIREMENTS APPLICABLE TO THE CALCULATION OF IMPACT FEES:



- ▶ Fee must be reasonably related to the costs imposed upon the municipality in the preceding year by the operation of the marijuana business, as documented.
- ▶ Fee must not exceed three percent (3%) of the marijuana business's gross sales.
- ▶ Fee must be based on actual costs, rather than as a percentage of total or gross sales.
- ▶ Fee can be effective for no longer than the eighth (8th) year of operation of the marijuana business.

THE ACT IDENTIFIES THE FOLLOWING REQUIREMENTS APPLICABLE TO THE CALCULATION OF IMPACT FEES:

- ▶ Fee commences on the date the marijuana business is granted a final license by the CCC, with payment due annually to the host community.
- ▶ Fee must be annually documented and transmitted by the host community to the marijuana business not later than one (1) month after the marijuana business' license is renewed by the CCC.
- ▶ Fee must encompass all payments and obligations between the host community and the marijuana business.
- ▶ Fee must not include any additional required payments or obligations, including monetary payments and charitable contributions by the marijuana business to the host community or any other organization.

BREACH OF CONTRACT CLAIM, DAMAGES, ATTORNEYS FEES

- ▶ The Act also creates a breach of contract claim, to be brought in Court, to allow a licensed marijuana business to challenge a municipality's documentation of costs for purposes of calculating the community impact fee.
- ▶ If the marijuana business prevails on the claim, the violation may be punishable by the award of **damages, attorneys' fees and other costs encompassed in the community impact fee.**



THE CANNABIS CONTROL COMMISSION

The Act provides the CCC with enhanced authority concerning HCAs

- ▶ The CCC has jurisdiction to “**review, regulate, enforce and approve**” HCAs as part of a completed marijuana business license application and at each license renewal.



HCA Review by the CCC



- ▶ The CCC will provide written notice of any **deficiencies** identified by during its review of the HCA for compliance and may request additional information from the marijuana business and the host community.
- ▶ It is required to complete its review of an HCA within ninety (90) days after the HCA is received.
- ▶ The CCC will **not** approve a final license application for the marijuana business unless the CCC certifies that the HCA is in **compliance with the new statutory requirements** for HCAs.
- ▶ The CCC is required to promulgate rules and regulations to implement and enforce the Act by November 2023.
- ▶ The Act also directs the CCC to prepare a **model HCA**.

BEST PRACTICE: DOCUMENT IMPACT COSTS

- ▶ Given the legislative amendments, the ability of a host community to require the payment of community impact fees will likely depend, to some extent, on its capacity to properly document and keep an accurate accounting of impact costs.



BEST PRACTICES

- ▶ Municipalities should closely document any costs imposed by the operation of the marijuana business 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
- ▶ Maintain a separate tracking file for each establishment
- ▶ All tracking records are public records
 - ▶ Anticipate applicant requests (935 CMR 500.103(4)(f))

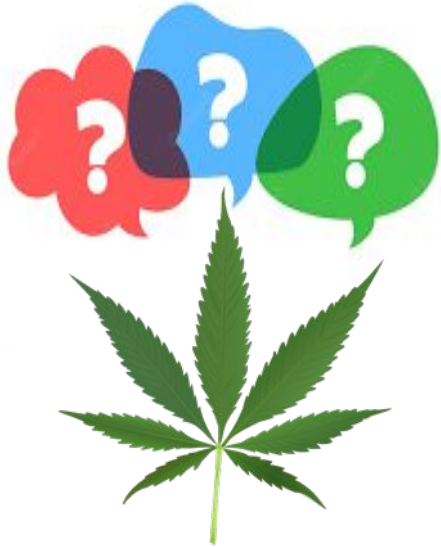
POTENTIAL IMPACT COSTS

- ▶ Municipal administration expenses
- ▶ Traffic intersection design studies
- ▶ Public safety personnel overtime
- ▶ Environmental impact studies
- ▶ Substance abuse programming
- ▶ Costs associated with recordkeeping
- ▶ Legal fees and costs to review HCAs, operational plans and local permitting applications

PROMOTION OF SOCIAL EQUITY BUSINESSES AND TAXATION

- ▶ In addition to the excise taxes that host communities may collect pursuant to G.L. c. 64N, § 2, municipalities that host social equity business retailers shall receive an added excise at the rate of one percent (1%) from the State from the sales of marijuana retailers that are also social equity businesses. Such tax would be collected by the Department of Revenue from the establishments and then the local share will be paid by DOR to the municipality on a quarterly basis.
- ▶ By July 1, 2023, host communities must adopt procedures and policies that establish minimum standards to promote social equity businesses; a municipality that is not a host community must establish these standards before entering into an HCA with a marijuana business.
- ▶ A host community's failure to adopt such procedures and/or abide the CCC's regulations may result in forfeiture of a monetary amount equal to the annual total of community impact fees received from all marijuana businesses operating within the host community.

ANY FINAL QUESTIONS?



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