
Memorandum

To: Chair O'Brien, Commissioners Camargo, Concepcion, Roy & Stebbins
Cc:
From: Shawn Collins, Executive Director
Christine Baily, General Counsel
Steven Laduzinski, Associate General Counsel
Date: November 4, 2022
Subject: November Public Meeting-Commission Consideration and Vote on Review of
New HCA Requirements
– FOR INFORMATION

We recommend that the Commission consider and vote on a decision not to review certain new requirements pertaining to Host Community Agreements (HCAs), until the Commission has promulgated regulations.

Background

An Act relative to equity in the cannabis industry, St. 2022, c. 180 (Act), at [Session Law - Acts of 2022 Chapter 180 \(malegislature.gov\)](#), became effective as of November 9, 2022. This statute establishes new provisions requiring HCAs to comply with G. L. c. 94G, § 3 (d) (1), (2) (i) to (iii), and (3), at [General Law - Part I, Title XV, Chapter 94G, Section 3 \(malegislature.gov\)](#) (New HCA Requirements).¹ Because municipalities are responsible for implementing the "Local

¹ Under G. L. c. 94G, § 3(d), there are several new requirements:

“(1) A marijuana establishment or a medical marijuana treatment center seeking a new license or renewal of a license to operate or continue to operate in a municipality that permits such operation shall negotiate and execute a host community agreement with that host community setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within the host community, which shall include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment or medical marijuana treatment center.

“(2)(i) Notwithstanding any general or special law to the contrary, a host community agreement may include a community impact fee for the host community; provided, however, that no host community agreement shall include a community impact fee after the eighth year of operation of a marijuana establishment or a medical marijuana treatment center. The community impact fee shall: (A) be reasonably related to the costs imposed upon the municipality by the operation of the



control” provisions of the statute, the Commission will likely be voting on applications for licensure, including for renewal, where municipalities and applicants have not entered into an HCA incorporating the new requirements.²

marijuana establishment or medical marijuana treatment center, as documented pursuant to subparagraph (iii); (B) amount to not more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center; (C) not be effective after the marijuana establishment or medical marijuana treatment center’s eighth year of operation; (D) commence on the date the marijuana establishment or medical marijuana treatment center is granted a final license by the commission; and (E) not mandate a certain percentage of total or gross sales as the community impact fee.”

“(ii) Notwithstanding any general or special law to the contrary, the community impact fee shall encompass all payments and obligations between the host community and the marijuana establishment or a medical marijuana treatment center. The community impact fee shall not include any additional payments or obligations, including, but not limited to, monetary payments, in-kind contributions and charitable contributions by the marijuana establishment or medical marijuana treatment center to the host community or any other organization. Payment of the community impact fee shall be due annually to the host community, with the first payment occurring not sooner than upon the first annual renewal by the commission of a final license to operate the marijuana establishment or medical marijuana treatment center. Any other contractual financial obligation that is explicitly or implicitly a factor considered in, or is a condition of a host community agreement, shall not be enforceable. Nothing in this section shall preclude a marijuana establishment or a medical marijuana treatment center from voluntarily providing organizations with monetary payments, in-kind contributions and charitable contributions after the execution of the host community agreement; provided, however, that a host community agreement shall not include a promise to make a future monetary payment, in-kind contribution or charitable contribution.”

“(iii) Any cost imposed upon a host community by the operation of a marijuana establishment or medical marijuana treatment center shall be documented by the host community and transmitted to the licensee not later than 1 month after the date of the annual renewal of a final license to operate the marijuana establishment or medical marijuana treatment center and shall be a public record as defined by clause Twenty-sixth of section 7 of chapter 4 and chapter 66. If a licensee believes the information documented and transmitted by a host community is not reasonably related to the actual costs imposed upon the host community in the preceding year by the operation of the marijuana establishment or medical marijuana treatment center, the licensee may bring a breach of contract action against the host community and recover damages, attorneys’ fees and other costs encompassed in the community impact fee that are not reasonably related to the actual costs imposed upon the city or town.”

² To the extent that a potential plaintiff would be inclined to challenge a decision to approve a license application, that plaintiff would need to establish standing.

Discussion and Recommendation

Ultimately, municipal officials are responsible for interpreting and implementing the statute at the local level. Municipalities should come into compliance with the new HCA requirements as soon as they are able. Municipalities do not have to wait for the Commission to promulgate regulations by or before November 9, 2023, given that its regulations will be consistent with the new statutory requirements. Communities are therefore advised that they should consult counsel to consider whether their existing or pending HCAs conform with the statute.

For these reasons, we recommend that the Commission not review applicants' compliance with these requirements until the Commission has promulgated regulations under the above-mentioned statutory sections. G. L. c. 94G, § 3 (d) (5)-(6). See G. L. c. 94G, § 4 (a) (xxix) (authorizing the Commission to review, regulate, enforce and approve HCAs under § 3 [d]). This will allow the Commission additional time to consult with Commission staff and external stakeholders and to draft regulations that benefit from their input.

Under G. L. c. 94G, § 3 (d) (4), a municipality can waive the HCA requirement through a written submission to the Commission. Accordingly, the Commission will develop an appropriate form for use by municipalities and all applicants, so that they may easily obtain such a waiver if one is granted locally.

We will remind other state and local officials to consult their own counsel to address new statutory requirements under their jurisdiction. For example, the Commission is not preventing the Department of Revenue from collecting appropriate taxes, including the local tax option, or municipalities from collecting host community impact fees in the regular course.

In sum, this approach allows the Commission an appropriate opportunity to establish, consistent with past process, thoughtful regulations that benefit from broad engagement and input, while not halting or hindering our existing licensing process, including those applicants currently pending before the Commission. Relatedly, our regulatory process will prioritize those items addressed within and required by the Act.

Motion

If the Commission supports this recommendation, the motion could include the following:

The Commission votes to not consider applicants' compliance with G. L. c. 94G, § 3 (d) (1), (2) (i) to (iii), (3), until the Commission has promulgated relevant regulations, which will occur on or before November 9, 2023. Further, the Commission encourages communities to consult counsel in order to consider whether their existing or pending Host Community Agreements conform with the new statutory requirements.