Massachusetts Municipal Lawyers Association

August 4, 2022

To: His Excellency Charles Baker
Governor of the Commonwealth
State House
Boston, MA 02133

Re: S.3096 – An Act relative to equity in the cannabis industry

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Dear Governor Baker:

I am writing to you in my capacity as the Executive Director of the Massachusetts Municipal Lawyers Association (MMLA), the state's municipal bar association, to express our concerns associated with S.3096, which is currently before you for signature.

We have closely monitored the General Court's discussions and debate on the issues, especially those sections of the bills that pertain to host community agreements ("HCAs") and community impact fees, and we provided our comments to the Conference Committee on July 12, 2022. While the Committee addressed some of our comments in S.3096, there are a few remaining provisions with which we continue to have concerns, as detailed herein.

First, S.3096 shifts significant administrative burden and risk onto municipalities. Municipalities considering a new, or renewing an existing, HCA, may be deterred because of the outlay of resources and funds necessary to negotiate such an agreement, track impacts and costs, report, and defend lawsuits. S.3096 contains language that requires municipalities to document costs imposed by the operation of a marijuana treatment center or marijuana establishment, and to provide that documentation to the licensee, who is given the explicit right by S.3096 to file a breach of contract claim if the licensee believes the information is not reasonably related to the actual costs imposed upon the host community, and collect attorneys' fees, damages, and costs. More specifically, S.3096 mandates that municipalities must first expend taxpayer monies to address impacts, document and track those expenditures and only then can they seek reimbursement for costs incurred the preceding year through community impact fee payments. In addition, S. 3096 appears to suggest that municipal impacts have been fully realized and can be immediately addressed while, at the same time, directing the Cannabis Control Commission ("CCC") to conduct studies to assess both foreseen and unforeseen impacts. We think this amendment to G.L. c.94G, §3(d) is unnecessary and overly burdensome for municipalities especially given that most cities and towns do not have funds necessary in their limited budgets to expend monies without first receiving impact fee payments.

Second, annual CCC review and approval of HCAs is not necessary, particularly where the CCC must develop a model host community agreement, and also, in light of the MA Office of the Inspector General having jurisdiction to advise municipalities on whether the terms and conditions of an HCA are compliant with state law. Communities are capable of entering into HCAs that comply with the regulations without requiring another level of review and approval, that adds significant time and expense to the process. Both parties to the HCA should determine that the HCA is reasonable and in compliance with the law.

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Finally, S.3096 is not clear on its face how it effects existing HCAs, opening municipalities up to uncertainty and litigation.

We ask that you consider the points made herein as you consider S.3906, as it shifts too much of the burden and risk of private industry onto municipalities.

Sincerely,

James Lampke, Esq.
Executive Director, MMLA