Jan 31, 2024

Cannabis Control Commission
(via Commission@CCCMass.com)
Union Station
2 Washington Square
Worcester, MA 01604

Delivered Electronically

Dear Members of the Cannabis Control Commission:

The Massachusetts Municipal Association ("MMA") joins with the Massachusetts Municipal Lawyers Association ("MMLA") in providing the following comments to the Cannabis Control Commission's ("CCC") Model Host Community Agreement Template, released Jan. 17, 2024.

Our organizations support the intended goal of the CCC's Model Host Community Agreement Template and believe that it has the potential to provide clarity in what can be a confusing and conflicting process for both Host Communities and Marijuana Establishments. The MMA and MMLA respectfully submit the following comments on the proposed draft model HCA to help provide further clarity and aid parties in reaching a mutually amenable agreement.

I. Preamble

The Preamble to an agreement sets out the purpose and scope of the parties' intent. As it is written now, there is little explaining why the parties are entering into the agreement. Proposed additional language:

> *WHEREAS, the Company anticipates that the Municipality may experience both direct and indirect impacts to public health, as well as unforeseen impacts, both quantifiable and unquantifiable on the Municipality, as a result of the operation of the establishment.*
>
> *WHEREAS, the Company desires to be a responsible corporate citizen and contributing member of the business community of the Municipality and*

reimburse the Municipality for impacts reasonably related to the actual costs imposed upon the Municipality by the operation of the establishment.

We also suggest including detail on the proposed use and location in the preamble. For example, the site address, approximate square footage, and whether it will be used for cultivation, manufacturing, medical, recreational, etc.

II. Terms

"Community Impact Fee" is not defined using the same language as included in 935 CMR 500.000 Adult Use of Marijuana Regulations ("regulations"). For clarity, identical language should be used regardless of whether the regulations control in instances of conflict. Additionally, our hope is that the Commission will issue guidance on the term "Enhanced Need", as it is not defined in the regulations and could create a vague contract term if not further defined.

III. Location

Subsection 3(b) looks to allow an HCA to be used to certify whether the use is allowed in the proposed location under the municipality's local laws. However, it is important to note that an HCA cannot be used to assess compliance with local zoning, rules, or bylaws/ordinances with the contracting authority. For example, the contracting authority for the municipality may not make zoning determinations or wetland determinations to assess compliance. These are questions for the varying boards and commissions. We recommend language clarifying that an executed HCA is not dispositive proof of compliance with local laws.

Also, it is not clear how Section 3(c) is meant to differ from subsection (b) as these provisions appear duplicative. We recommend clarifying the intent of this additional subsection.

IV. Compliance

We recommend including a sunset clause in Sections 4(d) and (e) especially for those municipalities that have a limit on the number of permitted establishments. This will ensure HCAs are not pending without any action taken to commence operation to the detriment of a potential application seeking to locate in a municipality with a limitation.

Also, with respect to Section 4(f), as previously noted, the contracting authority cannot assess compliance with other local laws and the HCA should be clear in this regard. To avoid any confusion, we recommend that the following language be added to this section:

This Agreement does not affect, limit, or control the authority of the Municipality, or its boards, commissions, departments, and agents to carry out their respective powers and duties to decide upon and to issue, or deny,

applicable permits and other approvals under the statutes and regulations of the Commonwealth, the General and Zoning Bylaws/Ordinances of the Municipality, or applicable regulations of those boards, commissions, and departments or to enforce said statutes, bylaws/ordinances, and regulations. The Municipality, by entering into this Agreement, is not thereby required or obligated to issue such permits and approvals as may be necessary for the establishment to operate in the Municipality, or to refrain from enforcement action against the Company and/or the establishment for violation of the terms of said permits and approvals or said statutes, bylaws, and regulations. The Municipality makes no representation or promise that it will act on any license or permit request, including, but not limited to any zoning application submitted for the establishment, in any particular way other than by the Municipality's normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

In addition, we recommend defining the term "good faith" in Section 4(g) as this provision is unduly vague and can lead to differing opinions as to what is required.

V. CIFs and Generally Occurring Fees

In our opinion, it is important to define the scope of impacts in Section 5 to give both parties some parameters as to what possible impacts might reasonably include. Proposed additional language might include the following:

The Company acknowledges that, as a result of the Company's operation of the establishment, the Municipality may incur both direct and indirect expenses and impacts including, but not limited to, consulting services, administrative services and public health education and substance abuse counseling services, and any necessary and related legal and enforcement costs, as well as unforeseen impacts on the Municipality. Accordingly, in order to mitigate any direct and indirect financial impacts on the Municipality and use of Municipality resources the Company agrees to pay community impact fees to the Municipality under the terms provided herein:

Section 5(a)(3) repeats a statutory requirement and is not necessary to include in the HCA, in our opinion, as it does not concern impact fees.

Sections 5(a)(6) and (7) highlight an inherent inconsistency between the statute and the regulations. GL c. 94G, § 3, provides that "no host community agreement shall include a community impact fee after the eighth year of operation." We read this to mean that impact fees can be assessed during and through the eighth year of operation and submitted to the company at

the time of the license renewal for the ninth year of operation for review by the Commission, in accordance with the regulations. We suggest clarifying this process in these two sections.

Similarly, subsection 5(a)(8) highlights a parallel inconsistency. Under GL c. 94G, § 3, a municipality must submit invoices to the company "not later than 1 month after the date of the annual renewal of a final license to operate." The regulations however, require municipalities to provide invoicing no later than one month after the anniversary of the date of the final license. Our hope is that the Commission clarifies whether the date of final license or the date of renewal, which can differ, is controlling. As the date of final license is crucial for the municipality, we recommend adding the following language since municipalities are not typically notified of either such date in advance:

> *The Company shall immediately, within forty-eight (48) hours of issuance, provide the Municipality with a copy of its final license from the Commission to operate the establishment and also written notice of the final license date. Failure to notify the Municipality in accordance with this provision shall grant the Municipality time, equal to the Company's delay, to submit CIF invoices to the Company.*
>
> *Annually, in conjunction with the Company's requirement to submit a license renewal application to the Commission to continue operations of the establishment, the Company shall provide the Municipality with written notice of the date it intends to file said renewal application with the Commission, along with a demand for documentation of impact costs, at least thirty (30) days in advance of the intended filing date for the renewal application. The Company shall annually provide written notice to the Municipality within forty-eight (48) hours of each renewal of its final license from the Commission to operate the establishment.*

Additionally, as a consequence is provided for failure to submit invoices in a timely manner, there should be a consequence for failure to timely provide the final license date to the Municipality, consistent with principles of equity, transparency and fairness in the regulated industry.

We note that Section 5(a)(8) also raises the issue of invoice formatting. The regulations call for detailed invoicing in a manner and form approved by the Commission. Our hope is that the Commission will provide examples of these invoices in a timely manner and provide a timeline for when the Commission will begin to review the impact fees.

Subsection 5(a)(10) limits payments of "undisputed" CIFs but does not define this term. There is no procedure for payment if the disputed fee is later determined to be proper. Additionally, the

term "fiscal year" needs to be defined. Is this the municipality's fiscal year or the company's fiscal year? We suggest the following language instead:

> *Following the Commission's certification determination, the Parties may seek to resolve any disputes concerning the CIF by informal negotiations. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may agree to submit the dispute to mediation. Within fourteen (14) days of either party informing the other of its intent to seek mediation, the Parties shall propose and agree upon a neutral and otherwise qualified mediator, unless a longer time period is agreed to by the Parties. In the event that the Parties fail to agree upon a mediator, the Parties shall request that an independent arbitration provider, such as the American Arbitration Association, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed ninety (90) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties shall each bear their own costs of the mediation.*
>
> *Unless of the Company timely submits a request for mediation within sixty (60) days, initiates litigation and/or seeks administrative review of the certification by Commission, the CIF shall be due and payable within ninety (90) days of certification by the Commission or the end of the Municipality's current fiscal year, whichever is later.*

For similar reasons, we recommend striking Section 5(a)(11) as the term "nonfrivolous legal dispute" is undefined and unduly vague. Whether a dispute is frivolous is a matter for the courts to decide and the parties can seek relief from the Court should they wish.

Further, with respect to Section 5(c), a Municipality cannot comprehensively list all generally occurring fees. These fees may differ depending on the location and use. We recommend adding "but not limited to" and "nothing set forth herein shall limit the Municipality's ability to recover fees customarily imposed on non-cannabis businesses."

VI. Security

We recommend removing the requirement for approval of a security plan by a local police department in Section 6(a) as this is not a requirement of the regulations. Instead, we suggest amending this language to add a qualifier such as "to the extent requested by the Municipality's Police Department", as not all police departments will choose to take an affirmative role in the process. Additionally, we recommend including a provision to address the review of a diversion prevention plan, to the extent requested by the Police Department.

VII. Nuisance Mitigation Provisions

We recommend including nuisance mitigation provision beyond the scope of Section 7. We suggest including provisions on odor mitigation, hours of operation, lighting, traffic, parking, and wastewater. These provisions are especially important for municipalities that do not have a special permit requirement for marijuana establishments.

VIII. Equity and Local Opportunities

Subsection 8(a) uses the term "good faith efforts" without defining this term. As previously noted, we recommend including a definition to avoid any confusion between the parties. For example:

> *Best efforts shall include, at a minimum, actively soliciting bids from vendors in the Municipality through local advertisements and direct contact, advertising any job expansion or hiring of new employees first to residents a minimum of two (2) weeks before advertising through all typical regional employment advertising outlets, and such other reasonable measures as the Municipality may from time-to-time reasonably request.*
>
> *Further, prior to hiring any new employees for the Facility, Company shall advertise and hold at least one (1) hiring event for residents of the Municipality, at which it will review its hiring needs and explain to attendees the process by which they may seek to be hired in connection with the establishment. Said hiring event shall take place at such other location in the Municipality as may be deemed appropriate by the Company*.

Additionally, Sections 8(b) and (c) appear to be goals of the Commission, not goals between the Company and the Municipality. Accordingly, we suggest removing them from the HCA.

IX. Effective Dates and Termination

As stated above, we recommend a sunset clause and diligent pursuit provision to ensure that projects move along in a timely manner. We recommend the following language:

> *Further, in the event the Company has not secured a final license from the Commission, all necessary local permits from the Municipality and commenced operations at the establishment within eighteen (18) months from the date of execution of this Agreement, this Agreement shall expire and the Company shall be required to negotiate a new host community agreement with the Municipality in order to operate the establishment within the Municipality; provided, however, that at the request of the Company, the Municipality, in its discretion, may agree to a written extension of the eighteen (18) month expiration, for good cause, which shall include the time required*

to pursue or await the determination of an appeal of the special permit or other legal proceeding.

The Company shall diligently pursue all licenses, permits and approvals required to open and operate the establishment. Within thirty (30) days of the Effective Date of this Agreement, the Company shall file an application with the Commission and all required supporting documents to request provisional licensure for the establishment. Within ninety (90) days of the Effective Date of this Agreement, the Company shall file with the Municipality's Planning Board and Zoning Board of Appeals all application forms and required supporting documents to request special permits to allow the construction and operation of the establishment. Thereafter, the Company shall provide the Municipality with written status updates at least every thirty (30) days regarding all efforts undertaken by the Company to secure all necessary licenses, permits and approvals for the construction and operation of the establishment. The Company shall commence interior fit-up of the establishment within sixty (60) days after (i) the Company's receipt of any required zoning relief and/or permit(s) from the Planning Board and/or Zoning Board of Appeals, (ii) the issuance of a provisional licensure from the Commission, and (iii) the issuance of a building permit for the establishment, and it shall diligently continue construction through completion of the establishment. No later than sixty (60) days after completion of construction, the Company shall request a certificate of occupancy from the Municipality's Building Inspector and final licensure from the Commission.

We also recommend the following language to address grounds for termination:

The Municipality may terminate this Agreement for cause by providing written notice to the Company in the event that: (i) Company violates any laws of the Municipality or the Commonwealth with respect to the operation of the establishment, and such violation remains uncured for thirty (30) days following the Municipality's issuance to Company of written notice of such violation; (ii) Company fails to make payments to the Municipality as required under this Agreement, and such failure remains uncured for thirty (30) days following the Municipality's issuance to Company of written notice of such violation; (iii) there is any other breach of the Agreement by the Company, which breach remains uncured for thirty (30) days following the Municipality's issuance to Company of written notice of such violation; or (iv) the Company's license is revoked or suspended by the Commission.

X. <u>Discontinuance</u>

As stated before, "bad faith" is an undefined term and unduly vague. For similar reasons we recommend defining "reasonable advance notice". Additionally, we propose including a provision that obligates the Company to pay accrued CIFs if it ceases operations or moves to another municipality.

XI. Confidentiality

We recommend striking section 12, as this confuses the Public Records Law.

XII. Notice

We strongly recommend against using email addresses for notice. This does not allow for continuity between changing staff and personnel. Additionally, important notices may be blocked in spam or may fail to deliver due to the size of the message or for other technical reasons. For these reasons, we recommend all notices be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail. Additionally, we recommend including the names and contact information for individuals that will be the emergency contacts for the Company in the HCA.

XIII. Additional Provisions

Finally, we recommend adding the following provisions in order to ensure compliance:

> *Annual Reporting: The Company shall file an annual written report with the Town at the time of its Annual License Renewal each year for purposes of reporting on compliance with all of the terms of this Agreement and shall, at the request of the Town, appear at a meeting to discuss the Annual Report.*
>
> *Limitation on Use: Even if authorized by the Commission, the Company shall not engage in uses not provided herein at the establishment absent prior written approval from the Municipality. Further, at the discretion of the Municipality, either an amendment of this Agreement or a new host community agreement shall be required for such additional use.*

We hope you find these comments helpful and in the spirit of cooperation with which they are intended. We are eager to create more clarity around the law for all stakeholders and to help successfully implement the law. If you have questions or desire additional comment, please contact MMA Legislative Analyst Ali DiMatteo at adimatteo@mma.org and Jillian N. Jagling, Esq. Chair of MMLA Legislative Committee at jjagling@westgrouplaw.com.

Thank you for your time and consideration of the above comments and recommendations.

Sincerely,

Adam Chapdelaine
Executive Director & CEO
Massachusetts Municipal Association

/s/ *Karis L. North*
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President
Massachusetts Municipal Lawyers Association