

Cannabis Control Commission Regulatory Amendments Impacting Municipalities (Part I)

Prepared for the January 2024 MMA Business Meeting and Trade Show

As many municipalities may recall, Chapter 180 of the Acts of 2022, "[An Act Relative to Equity in the Cannabis Industry](#)" (the "Act")¹ made numerous changes to Massachusetts' cannabis laws, G.L. c. 94G, effective November 9, 2022, including those governing Host Community Agreements ("HCAs") and community impact fees ("CIFs"). It also greatly expanded the regulatory oversight authority of the Massachusetts Cannabis Control Commission (the "CCC").

On October 27, 2023, the Cannabis Control Commission ("CCC") published its revised regulations for Adult Use of Marijuana ([935 CMR 500.000](#)) and Medical Use of Marijuana ([935 CRM 501.000](#)), pursuant to Act. This is the first of a three-part memorandum exploring major changes to the HCA process and what to know about the upcoming March 1, 2024, deadline. The second and third installments of this update will explore new requirements for the collection of CIFs and the CCC's certification of the same, as well as changes to the social equity regulations and the HCA process for Social Equity Businesses.

HOST COMMUNITY AGREEMENTS²

CCC Review and Approval of HCAs. Beginning March 1, 2024, the CCC shall review and approve each HCA as part of a marijuana business' completed initial license application and at each license renewal to determine compliance with the Act and new regulatory requirements. The CCC's regulations purport to apply the Act retroactively and therefore, even pre-existing HCAs (i.e., those effective prior to November 9, 2023) shall be subject to the CCC's review and approval. In particular, the regulations provide that the CCC may:

- Deem an HCA provision invalid or unenforceable;
- Declare an HCA or a provision of an HCA voidable upon deeming the HCA as a contract of adhesion; and
- Issue fines and other sanctions against a Host Community that is "noncompliant" with HCA regulatory requirements.

Upon presentment of an HCA by a marijuana business, the CCC has 90 days to review and issue a decision on a submitted HCA, or "HCA Waiver" (explained below). If the CCC determines that an HCA for an initial application is

¹ For reference please see our previous [eUpdate](#).

² Additional regulations apply to social Equity Businesses and there are now new requirements regarding equity standards in the HCA process. These standards will be discussed in detail in the third installment of this update.

not compliant in any manner, it must provide written notice to the parties of any deficiencies identified by during its review of the HCA, as noted below, and may request additional information from the marijuana business and the Host Community. Any resubmission or amendment to the HCA restarts the 90-day timeframe for review. Failure to submit a compliant HCA or HCA Waiver with an application for licensure may result in a marijuana business' application remaining incomplete or may be grounds for denial of a renewal application.

The CCC's noncompliance notice to the parties shall state:

- (1) The factual basis for the finding of noncompliance, including identification of the noncompliant term(s), condition(s), or provision(s) of the HCA, if applicable;
- (2) The parties' option to correct the noncompliance and submit an amended HCA;
- (3) The parties' option to submit an HCA Waiver; and
- (4) The parties' option to proceed under an executed HCA that conforms with the CCC's Model Host Community Agreement, to be relied on in the interim until the parties come to an agreement³.

Importantly, while the CCC does not include this option in its noncompliance notice, the regulations provide that a Host Community may discontinue relations with a marijuana business provided, however, that such discontinuance is not in "bad faith", as noted below.

Minimum Acceptable Requirements. HCAs must include a statement of all stipulated responsibilities between the municipality and the marijuana business, including all terms and conditions, such as:

- A provision that the municipality will transmit CIF invoices to the marijuana business within one month of the anniversary date the business received the final license⁴ and "clear, specific terms" regarding a Host Community's assessment of a CIF;
- A provision explicitly identifying generally occurring fees⁵ (e.g. routine water, property tax, sewer, trash pickup etc.);
- The specific marijuana business license operations allowed under the terms of the HCA ((e.g., manufacturing, retail, delivery, cultivation, etc.);
- The name, signature, and title of the person authorized to enter into the HCA on behalf of the municipality;

³ The CCC has not yet issued a model HCA agreement or HCA Waiver form, but presumably will do so before March 1, 2024.

⁴ The regulations do not clarify if the date remains the same after the first final license is issued. If the license is renewed on a date other than the first anniversary, it is unclear whether the new date becomes the anniversary date. While not required by the CCC, we recommend including a provision requiring the marijuana business to notify the Host Community of the date on the final license promptly after it is issued, as well as the date of each license renewal.

⁵ Generally occurring fees are customarily imposed on other non-cannabis businesses operating in a Host Community and will not be considered a CIF.

- The name, signature, and title of the person authorized to enter into the HCA on behalf of the marijuana business;
- The certified business name of the licensee or applicant as recorded with the Secretary of State and CCC;
- The date of execution by both parties;
- The effective date of the HCA; and
- The duration of the HCA, which cannot be indefinite.

Prohibitions. The regulations provide that external or contemporaneous agreements between the Host Community and marijuana business to impose terms or conditions outside of an HCA will be unenforceable. Additionally, the CCC prohibits certain provisions in HCAs and will find them void, including provisions:

- Discouraging parties from bringing a civil cause of action or other legal challenge relative to an HCA or to an individual term;
- Affording a Host Community sole and absolute discretion on how it will spend CIFs;
- Mandating or otherwise requiring that the CIF be a certain percentage of a total or gross sales;
- Imposing legal, overtime, or administrative costs or any costs other than a CIF with the exception of tax obligations or routine, generally occurring municipal fee(s);
- Categorically deeming a Host Community's claimed impact fees to be reasonably related to the business' operations, or that otherwise excuse a Host Community from calculating impact fees based on the actual operations of a marijuana business;
- Including or otherwise deeming good faith estimates, unquantifiable costs, generalized expenses, or pro-rated expenses as a CIF;
- Waiving a marijuana business' ability to dispute whether impact fees claimed by a Host Community are reasonably related and properly due and payable as a CIF; and
- Imposing an unreasonable condition or a term that is "unreasonably impracticable"⁶ in an HCA.

Presumption of Reasonability for Some Terms and Conditions. Certain conditions and terms in the HCA shall be presumed reasonable by the CCC, such as those that are:

- Required under by local rules, regulations, ordinances, or bylaws;
- Have been deemed necessary to ensure public safety and proposed by the chief law enforcement authority and/or fire protection chief with explanation and detail why the condition is necessary for public safety.

⁶ The CCC defines "unreasonably impracticable" as anything that exposes the marijuana business to "unreasonable risk or require[s] such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate" the marijuana business.

- Have been deemed necessary to ensure public health and proposed by the chief public health authority in a Host Community with explanation and detail why the condition is necessary for public health.
- A local requirement customarily imposed by the Host Community on other, non-cannabis businesses operating in the community;
- Required by law and do not conflict with other laws; or
- Otherwise deemed reasonable by the CCC based on particular circumstances presented by an HCA or contracting parties.

No Monetary Obligations Outside of CIFs. The CCC further restricted municipalities' authority to contract for financial obligations in HCAs. While there is no restriction on generally occurring fees like water, sewer, property tax, etc., no other financial obligations can be imposed on marijuana businesses outside of CIFs. This includes legal fees, overtime, and administrative costs outside of a CIF, as well as any additional payments or obligations including but not limited to monetary payments, in-kind contributions, providing staffing, advance payments, or charitable contributions. Similarly, the regulations restrict Host Communities from requiring upfront payments as a condition for operating in the Host Community. Likewise, Host Communities may not require money to be held in escrow, bond, or other similar account for the Host Community's use or purposes.

HCA Waivers. Municipalities can choose to forgo the HCA process and agree to waive the HCA requirement, in the form and manner determined by the CCC. The HCA Waiver constitutes a total relinquishment of the requirement to enter into a HCA. No party to an HCA may use an HCA Waiver to waive individual provisions of a HCA and, therefore, an HCA Waiver that sets an expiration date or any conditions will be deemed noncompliant. Once an HCA is recorded with the CCC, it can only be rescinded upon the CCC's approval of a complaint HCA subsequently executed and submitted by the parties.

NOTE: It is unclear if granting an HCA Waiver to one marijuana business will affect the Host Community's negotiations with other marijuana businesses. Host Communities considering HCAs Waivers should be mindful of whether their existing local bylaws or regulations sufficiently regulate marijuana businesses (i.e., odor controls, traffic, dark sky lighting, water usage, hours of operation, etc.).

Discontinuing Host Community Status. Municipalities can notify marijuana businesses if they no longer intend to continue as Host Communities, as long as this is not done in bad faith. If a Host Community discontinues relations with a marijuana business, or on submission of a mutual abrogation agreement executed by the parties, the marijuana businesses may submit a request for equitable relief to the CCC and send notice of the same to the municipality. The CCC may then exercise its discretion to (1) extend the business' license expiration date without additional prorated license fees, (2) waive a change of location fee, (3) institute procedures for winding down of operations at the licensed premises, or (4) any other equitable relief as determined by the CCC. If the CCC grants or denies a request for equitable relief, the agency will provide notice of its decision to the parties and both the municipality and the marijuana business can seek relief from that decision from a court of competent jurisdiction.

Complaints of Noncompliance and Enforcement. The CCC also has the authority to investigate any complaint of noncompliance and take enforcement action if noncompliance is found. Failure of a municipality to correct

noncompliant conduct can have serious consequences. The CCC can impose sanctions of up to \$50,000 per violation per day. Aggravating circumstances like duration and severity of the violation, previous noncompliance, knowledge of the violation, or whether the offense constituted grounds for denial of a license renewal will determine the severity of the fine. The municipality may also lose its “good compliance standing” and the CCC may abstain from considering for any new license applications affiliated with the community until the good compliance standing is restored.

MARCH 1, 2024, DEADLINE AND COMPLIANCE

Any applications for an initial license or for a license renewal on or after March 1, 2024, must comply with these new regulations. The CCC has made clear that it will reject existing HCAs that do not comply with the newly promulgated regulations, regardless of the HCAs’ compliance with previous regulations. Municipalities which have signed HCAs with marijuana businesses may want to consider reviewing those existing HCAs now to assess compliance with the regulations, and evaluate how they wish to proceed, in the event of a finding of noncompliance by the CCC.

While not all marijuana businesses with existing HCAs will be seeking a license renewal in March, Host Communities may wish to begin negotiations for new compliant HCAs now. Such communities may inquire with existing marijuana businesses to determine when they intend to apply for license renewal and plan negotiations (if any) accordingly.

For further information, please contact your KP Law attorney at 617.556.0007 with questions or contact Attorneys Lauren F. Goldberg (lgoldberg@k-plaw.com) or Nicole J. Costanzo (ncostanzo@k-plaw.com).

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