KP | LAW eUpdate

New Developments Regarding Marijuana Host Community Agreements

June 28, 2024

This is to inform you of a Superior Court decision in the matter of Haverhill Stem, LLC v. City of Haverhill, et al, Essex County Superior Court, Docket No. 2177CV00375 (June 10, 2024), addressing, among other questions, whether Chapter 180 of the Acts of 2022, An Act Relative to Equity in the Cannabis Industry (the "Act"), applies retroactively to host community agreements ("HCAs") entered into before the law changed on November 9, 2022 ("Pre-existing HCAs"). The Act amended the cannabis laws, G.L. c.94G, in several ways, and, as a result, the Cannabis Control Commission ("CCC") amended its regulations, found at 935 CMR 500.00, *et seq*. and 501.00, *et seq.* (the "Amended Regulations"), to implement the Act. See our prior eUpdates on the Act here and on the Amended Regulations here. Of significant importance, the Haverhill Stem court concluded:

1) The Act only applies prospectively to new HCAs;

2) The CCC cannot, as a matter of law, retroactively apply to Pre-existing HCAs its October 2023 regulations, promulgated in response to the Act;

3) G.L. c.94G, §3, as it existed prior to the Act, did not require that community impact fee costs be documented in any specific manner, or even at all, prior to the expiration of the 5-year term that community impact fees could be assessed under the original statute.

Although the holding in Haverhill Stem has no precedential value, we anticipate municipalities will rely on it when analyzing whether to renegotiate Pre-existing HCAs, and, further, that other courts may find its holding persuasive.

Each marijuana business seeking the issuance of new or renewal licenses from the CCC must have an HCA with, or an HCA waiver from, the host municipality. In addition to raising the standard for municipal collection of community impact fees, the Amended Regulations provide that the CCC may opt to not renew a license for a marijuana establishment with a "non-compliant" HCA. As marijuana establishments with Pre-existing HCAs have sought annual renewal of their licenses over the last several weeks, the CCC has notified both applicants and municipalities in writing that their Pre-existing HCAs are "non-compliant" with the Amended Regulations.

The Haverhill Stem decision holds that the CCC's regulations "do not retroactively govern the parties' rights and obligations under their Host Community Agreement". The Haverhill Stem decision therefore provides important clarification that marijuana establishments' payment obligations under Pre-existing HCAs continue and were not rendered moot by the CCC's adoption of the Amended Regulations. As was required under G.L. c.94G prior to the passage of the Act, however, municipalities with Pre-existing HCAs must continue to document costs reasonably

related to marijuana establishments' impacts in order to collect community impact fees. Of course, municipalities must still review the exact terms of their Pre-existing HCAs as negotiated agreements vary with respect to monetary and other obligations.

In addition, the Haverhill Stem court decision provides a basis, in our opinion, for the argument that municipalities do not need to renegotiate Pre-existing HCAs that have: (a) not yet expired, whether in response to recent requests from marijuana businesses for new or amended "compliant" HCAs or otherwise; or, (b) in response to the CCC "non-complaint" determinations referenced above. While we do not yet know what action the CCC might take, if any, in response to this judicial determination, municipalities may wish to consult their legal counsel to review the specific terms of their Pre-existing HCAs and their options when faced with requests to engage in renegotiations in response to action taken by the CCC. Of course, whether to renegotiate a Pre-existing HCA is a policy decision and a variety of other factors may influence municipal decisions as to whether or when to renegotiate. The application of the Haverhill Stem court's holding to a particular HCA must be reviewed on a case-by-case basis.

Based simply on the number of licenses granted by the CCC, it is reasonable to anticipate that this area of law will continue to evolve at a rapid pace. Moreover, it is possible that the Haverhill Stem decision will be appealed, giving the Massachusetts appellate courts the opportunity to address these and other relevant issues. We will continue to keep you updated on new developments.

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)