

## CANNABIS CONTROL COMMISSION

**September 21, 2023**

**9:30 AM**

**Via Remote Participation via [Microsoft Teams Live\\*](#)**

### PUBLIC MEETING MINUTES

#### **Documents:**

- [Meeting Packet](#)
- Letter from Massachusetts Municipal Association
- Email from Kevin Gilnack from Mass EON

#### **In Attendance:**

- Commissioner Nurys Z. Camargo
- Commissioner Kimberly Roy
- Commissioner Bruce Stebbins
- Acting Chair Ava Callender Concepcion

#### **Minutes:**

##### 1) Call to Order

- The Acting Chair recognized a quorum and called the meeting to order.
- The Acting Chair gave notice that the meeting is being recorded.
- The Acting Chair gave an overview of the agenda.

##### 2) Commission Discussion and Votes – 00:01:06

###### 1. Designation of Acting Chairperson

- The Acting Chair reminded the commissioners of Chair Shannon O'Brien's suspension and noted that as a result of the suspension, the Chair was legally unable to exercise the powers of her office, which included designating an Acting Chair. The Acting Chair emphasized that since the commission had not adopted a Governance Charter, the decision to appoint an Acting Chair rested with the entire body. She also reminded Commissioners that Monday's vote to designate an Acting Chair was not properly noticed and emphasized the importance of taking action to affirm that vote. She encouraged and emphasized the importance of transparent, honest and respectful discussion among the Commissioners.



- Commissioner Stebbins expressed willingness to make the same motion he made on Monday which designated the Acting Chair to continue serving during the regulatory process. He sought input from Acting General Counsel, Andrew Carter (AGC Carter) on the appropriateness of his proposal.
  - AGC Carter suggested two separate motions: one that would affirm Monday's votes and another that would address the closure of the regulatory process.
  - The Acting Chair sought clarification from AGC Carter on what closing out of the regulatory process entailed.
  - AGC Carter deferred to Commissioner Stebbins to explain his motion.
  - Commissioner Stebbins clarified the intent of his motion would be to designate Commissioner Concepcion as Acting Chair to guide the Commission through the regulatory review period. He sought AGC Carter's preference on the matter.
  - AGC Carter clarified that Commissioner Stebbins' previous motion was sufficient for the current purposes.
- Commissioner Roy requested Commissioner Stebbins repeat the motion language for clarity.
  - Commissioner Stebbins proposed a motion to affirm the vote made on September 18th, 2023, which designated Commissioner Concepcion as Acting Chair for the final regulations review period.
  - Commissioner Roy sought clarification on the duration of the motion if passed.
  - Commissioner Stebbins explained that the regulatory review period would end when the Commission took a final vote on the current redline draft regulations.
- Commissioner Camargo suggested reaffirming the same motion made on Monday to maintain clarity and legality.
  - The Acting Chair acknowledged the need to reaffirm Monday's motion. She emphasized the importance of deciding the next steps collectively among the four Commissioners in the best interest of the agency.
- Commissioner Roy sought clarification on whether the end point of the motion aligned with conclusion of the vote or the promulgation date.
  - The Acting Chair acknowledged Commissioner Roy's question and suggested focusing on the current situation first. She requested Commissioner Stebbins to repeat the motion from Monday for the record and subsequent voting. She expressed the need to have a conversation about the current day's proceedings and the formulation of a motion.
- Commissioner Roy inquired about the necessity of reaffirming the motion.
  - AGC Carter explained that the vote on Monday was not noticed, and reaffirming it ensures compliance with the Open Meeting Law and prevents any future challenges to the decision.
  - Commissioner Roy sought clarification whether the previous vote had not been conducted properly.



- AGC Carter clarified that reaffirmation was necessary to close the loop and ensure compliance with the Open Meeting Law. He explained that the initial vote was not noticed as it was new business at the time of posting.
  - Commissioner Roy sought clarification on how the loop was not closed.
  - AGC Carter explained that the loop was not closed because the votes were not anticipated and therefore not included in new business at the time of posting. He noted that in consideration of the Board's diligent work on finalizing the regulations, reaffirming the motion would ensure that all procedures had been followed correctly and avoid any potential challenges.
- Commissioner Stebbins sought clarification that his new motion was sufficient to reflect Monday's motion.
  - AGC Carter suggested moving to affirm the vote made on Monday, September 18, 2023, and reread the motion for the record.
  - Commissioner Stebbins moved to affirm September 18, 2023's vote designating Commissioner Concepcion as Acting Chair for the final regulations review period.
  - The Acting Chair seconded the motion.
  - The Acting Chair took a roll call vote:
    - Commissioner Camargo – Yes
    - Commissioner Roy – Yes
    - Commissioner Stebbins – Yes
    - Acting Chair Concepcion – Yes
  - The Commission unanimously approved the motion to designate Commissioner Concepcion as Acting Chair for the final regulations review period.
- Commissioner Camargo motioned to designate Commissioner Concepcion as Acting Chair until the completion of the regulatory process for Chapter 180. She explained her reasoning behind the motion.
- Commissioner Roy questioned whether Commissioner Camargo's motion implied that Commissioner Concepcion would serve as Acting Chair until November 9<sup>th</sup>. She raised concern of whether Social Consumption was also included in the motion.
  - Commissioner Camargo clarified that the motion did not include language for Social Consumption.
- Commissioner Roy expressed opposition to the motion and stated her desire for a debate during the next public meeting for the selection of an Acting Chair. She raised concerns about Chair O'Brien's status, the legality of her suspension, and a delegation memo received on September 13, 2023, that delegated authority to her as Acting Chair in the Chair's absence. She emphasized the need for a robust discussion at the next public meeting on October 12<sup>th</sup> and suggested focusing on the day's agenda.
  - Commissioner Camargo raised a point of order and highlighted the need to have the motion seconded before engaging in a discussion. She acknowledged the time constraints and reiterated her motion.



- Commissioner Stebbins suggested having a discussion before seconding the motion to ensure thoughtful consideration. He proposed to allow the Acting Chair to continue serving during the regulatory promulgation process until the next public meeting on October 12<sup>th</sup>.
  - Commissioner Camargo acknowledged Commissioner Stebbins suggestion and the need to strike a balance between progressing with the regulations and addressing concerns. She mentioned the possibility of withdrawing her motion or proceeding with a vote.
- Commissioner Roy sought clarification on Commissioner Stebbins' motion. She stated that all Commissioners possess the necessary skills and qualifications to chair the meeting and called for an open discussion at the next meeting.
  - Commissioner Stebbins explained that the motion was necessary as Chair O'Brien's status was uncertain. He commended the collective efforts of the Board and acknowledged the exhaustive nature of working through the regulations. He recognized the hard work of team members not visible on camera but who contribute daily to the regulatory process.
- The Acting Chair acknowledged the discomfort surrounding the conversation and emphasized the need to find a resolution to avoid repetitive discussions.
- Commissioner Stebbins stated that his suggestion aimed to facilitate the promulgation process and set the stage for the public meeting on October 12<sup>th</sup>.
- Commissioner Roy highlighted the precedent that had been established with the Secretary assuming the Chair's authority multiple times without objections. She referred to a delegation memo sent to all Commissioners before the Chair's suspension in which authority was transferred to her for the duration of the Chair's absence. She emphasized that there was a clear precedent, unanimously agreed upon, regarding the Secretary serving as the Acting Chair. She questioned why there had been disruption on Monday and suggested that if the logic was to be applied, it should also be applied to that situation.
  - Commissioner Camargo acknowledged that while everyone may have the capability to chair the meetings, not everyone may be willing to do so due to the challenging nature of the position. She emphasized the need to move forward and the importance of stability and self-governance. She acknowledged Commissioner Roy's current role as the Secretary and emphasized the need for her assistance in the coming weeks. She encouraged Commissioner Roy to propose a motion if she genuinely desired to serve as Acting Chair. She expressed the importance of focusing on the work at hand and urged for a motion to be put forward to avoid further delays.
- Commissioner Roy posed a question to AGC Carter and proceeded to read a statement into the record. She referenced a delegation memo received on September 13, 2023, from Chair Shannon O'Brien before her suspension. The memo stated that Commissioner Roy was designated to serve as the Acting Chair for the September 14th meeting and throughout the Chair's absence. Commissioner Roy sought clarification from AGC Carter on the legally binding nature of the memo.



- AGC Carter noted that due to Chair O'Brien suspension, she did not possess the legal authority to appoint an Acting Chair or exercise the powers of the office. He clarified that a change in Chair O'Brien's status would be determined by the Treasurer.
- The Acting Chair emphasized that AGC Carter had already provided an explanation on Monday regarding the extent of the Chair's legal authority during her suspension.
- Commissioner Camargo motioned to designate Commissioner Concepcion as Acting Chair until the completion of the regulatory process for Chapter 180.
- The Acting Chair seconded the motion.
- The Acting Chair took a roll call vote:
  - Commissioner Camargo – Yes
  - Commissioner Roy – No
  - Commissioner Stebbins – No
  - Acting Chair Concepcion – Yes
  - The Commission voted to designate Commissioner Concepcion as Acting Chair until the completion of the regulatory process for Chapter 180 by a vote of two in favor and two opposed. The motion did not pass.
- Commissioner Stebbins proposed a motion to designate Commissioner Concepcion as Acting Chair through the meeting of the Cannabis Control Commission on November 9th.
- The Acting Chair seconded the motion.
- Commissioner Roy raised concerns regarding the motion language put forward by Commissioner Stebbins and highlighted the deviation from the originally proposed language. She requested clarification behind his modification.
  - Commissioner Stebbins conveyed his intention was to align the date with the motion proposed on Monday. He expressed appreciation for the Acting Chair's point regarding the regulatory process and the requirement to promulgate the regulations by November 9<sup>th</sup>.
- Commissioner Roy requested confirmation that the Acting Chair would open the November 9<sup>th</sup> meeting, followed by a discussion to determine an Acting Chair.
  - Commissioner Stebbins stated that the agenda for the November 9th meeting had not been determined yet and suggested utilizing the October meeting to determine the agenda for the November meeting. He also expressed hope that any uncertainties surrounding Chair O'Brien's employment would be resolved by then.
  - Commissioner Roy voiced confusion about Commissioner Stebbins' opposing vote and inquired whether he wanted it to be included on the agenda for the November 9th meeting.
  - Commissioner Stebbins expressed his desire for flexibility in determining the content of the November 9th agenda. He noted the agenda did not need to be posted until two days prior to the meeting.
- Commissioner Stebbins proposed a motion to designate Commissioner Concepcion as Acting Chair through the meeting of the Cannabis Control Commission on November 9th.



- The Acting Chair seconded the motion.
- The Acting Chair took a roll call vote:
  - Commissioner Camargo – Yes
  - Commissioner Roy – Yes
  - Commissioner Stebbins – Yes
  - Acting Chair Concepcion – Yes
- The Commission unanimously approved the motion to designate Commissioner Concepcion as Acting Chair through the meeting of the Cannabis Control Commission on November 9th.

## 2. Draft Adult Use and Medical Use of Marijuana Regulations

- Enforcement Counsel, Rebecca Lopez (EC Lopez) read draft language pertaining to name or location change pursuant to 935 CMR 500.104(1).
- Commissioner Stebbins underscored the significance of clearly stating that an amended Host Community Agreement (HCA) would apply only to Marijuana Establishments (MEs) changing locations within the same host community, whereas a new HCA would be required for MEs relocating to a different host community.
  - Director of Licensing, Kyle Potvin (DOL Potvin) acknowledged that if an ME relocated to a new municipality, a new HCA would be necessary due to the involvement of a new contracting party. He suggested that if an ME changed locations within the same municipality, the requirement for an updated HCA would depend on any modifications made by the bodies. He recommended revising the language to align with the proposed policy.
- EC Lopez expressed willingness to provide updated language. She noted the complexity of various scenarios and the need for clarity on whether changes warrant an amended HCA. She reminded Commissioners about the waiver process for licensees to seek individual consideration based on specific circumstances.
- Commissioner Roy sought input from EC Lopez about the possibility of incorporating language in the Model HCA as an interim measure during the negotiation process.
  - EC Lopez emphasized that a submitted amended HCA would initiate a restart of the review process. She noted the need to review the HCA and ensure its compliance. She mentioned the requirement to issue a determination notice and highlighted that said determination notice would include the option for the Model HCA.
- The Acting Chair invited questions or comments. She sought consensus on the proposed amended language.
  - Commissioner Stebbins expressed agreement with the proposed language. He emphasized the need to provide clarity regarding the requirements for both marijuana establishments and host communities when relocating to a new host community.
- EC Lopez read the proposed amended language.
- Commissioner Stebbins suggested that one way to address the issue of having to obtain a new copy of the HCA whenever there were changes to the address, is to





- include a clause in the HCA that would allow for changes to be made without requiring a new copy.
- DOL Potvin expressed his understanding of Commissioner Stebbins' perspective and noted that staying within the same municipality could offer administrative efficiency. He provided an example where some HCAs do not include an address and indicated that in certain situations where a business moves within the same municipality, the HCA may remain unchanged. He argued that requiring an amended HCA could create an unnecessary administrative burden, as there would be no actual changes to be made. He recommended that any changes to the HCA should be submitted accordingly. He proposed the option for businesses to provide an attestation for HCAs that have remained unchanged without any modifications.
  - EC Lopez expressed disagreement with DOL Potvin on the matter. She argued that using the clause "if there are changes" in the context of HCAs could lead to confusion in cases where the HCA lacks location information. She proposed that in such situations, a waiver could be submitted to seek exemption from this requirement. She also expressed support for Commissioner Stebbins suggestion to remove the clause from the proposed language.
  - Commissioner Stebbins concurred with the proposed language and acknowledged DOL Potvin's argument that any HCA changes should be submitted. He emphasized the need to prevent unnecessary administrative burdens in cases where no changes occurred in the HCA. He concluded that the proposed language effectively addressed these concerns.
  - EC Lopez offered an amendment to the language by proposing the following wording: "a marijuana establishment that seeks a location change within the same Host Community after execution of an HCA, may be required to provide an amended HCA to the Commission." She noted that the amended language could address the scenario identified by DOL Potvin.
    - The Acting Chair agreed with the proposed language and confirmed that a consensus had been reached among the Board.
  - Commissioner Stebbins directed the Board's attention to the section of the regulations pertaining to Commission Review and Certification of Community Impact Fees (CIFs). He noted that the current wording of the section grants authority to the Commission to make a final determination on CIFs. He indicated that some of the language could be amended to reflect the goal of avoiding unnecessary regulatory processes for communities that no longer assessed a community impact fee. He believed that the proposed language would eliminate the Commission's role as arbiter and instead focus on regulations that incentivized and acknowledged positive behavior and relationships between MEs and HCAs. He concluded that the proposed language aligned with these objectives.
  - The Acting Chair inquired whether the proposed language aligned with the reasonableness standards established by Commission.



- EC Lopez explained that 94G, Section 3 in the Massachusetts General Laws pertained to Local Control. She noted that subsection D specifically addressed the legislature's expectation for parties to negotiate and execute an HCA, as well as granted authority to the host community to include a CIF. She suggested incorporating a general reference to this section to provide context and guidance.
- Commissioner Roy highlighted that the Commission had a statutory obligation to review, certify, and approve HCAs that stipulated all responsibilities. She questioned how the Commission could fulfill its due diligence without the ability to evaluate whether the impacts outlined in the HCAs were reasonably related and based on actual costs as stipulated by statute.
  - EC Lopez acknowledged that the legislature required the Commission to review the terms and responsibilities of HCAs, including the terms and responsibilities outlined within. She clarified that the CIF review process was distinct and separate from the HCA review. She noted that the legislature did not explicitly require the Commission to review each and every CIF in the same manner as HCAs. She deferred to the judgment of the Board to determine if Commissioner Stebbins' policy proposal aligned with the goals of the legislature and the Commission.
  - Commissioner Stebbins expressed appreciation for the enactment of Chapter 180 which was designed to address the treatment under the original statute and enable communities to collect funds. He stated that the legislation provided a process for the Commission to arbitrate questions regarding allowable costs and their impact on host communities and marijuana establishments. He emphasized the need for the Commission to consider the potential burden that costs claimed by host communities would have on municipalities, communities, and the Commission. He argued against the need for the Commission to review and certify the process if both parties were already in agreement. He highlighted the benefit of faster payment for municipalities and the need for host communities to accurately assess their claimed impacts.
  - Commissioner Roy expressed concern about potential disparities between entities with different resources. She stated that limiting oversight would hinder the Commission's ability to ensure compliance with the reasonable relatedness standard and could create an uneven playing field if oversight were restricted. She expressed appreciation for Commissioner Stebbins' perspective, but expressed fear that it could undermine the protections established by Chapter 180 if the Commission was unable to ascertain reasonable relatedness and actual costs.
  - Commissioner Stebbins emphasized that the proposed language is intended to provide a safeguard in the industry. He indicated that these proposed changes would not hinder the ability of smaller players to challenge imposed costs. He clarified that the intention was to encourage the continuation of positive relationships between smaller players and their host communities and municipalities. He believed that the proposed regulations would reward good





- behavior and avoid unnecessarily burdening the Commission with matters that were not being brought forward for action.
- The Acting Chair requested Commissioner Stebbins to provide a brief summary of the rationale behind his proposed language.
  - Commissioner Stebbins indicated that there was a timeline in place for host communities to submit invoices to marijuana establishments and document claimed impacts realized over the previous year of operation. He noted that the Commission would conduct a review to certify the reasonableness of the costs claimed or make a determination if the costs were deemed unreasonable.
  - The Acting Chair directed a question to EC Lopez and DOL Potvin regarding whether there were any provisions in the current regulations that would prohibit an operator from making payment prior to the Commission's review.
    - EC Lopez clarified that there was nothing in the current regulations preventing an operator from paying the CIF without disputing it. She explained that the Commission would be responsible for reviewing the fee to determine if it was reasonably related. She noted that the licensee would have the option to dispute the fee or pay it after the Commission's review. She highlighted that relinquishing oversight and determination of some CIFs would result in a lack of uniformity in enforcing the standard of reasonable relatedness. She remarked that if an invoice were to be received without dispute but contained an improper assessment of a CIF that was not reasonably related, the Commission's ability to take action could be limited since the parties would have already submitted an attestation. She emphasized that choosing to relinquish enforcement and oversight would be a policy choice that could lead to disparate standards and lack of uniformity based on the licensee and host community relationships.
    - The Acting Chair voiced concerns about the process and its potential to circumvent the Commission's reasonableness standards. She also expressed concern about payments being made before the review process, which had the potential to undermine the effectiveness of the standards.
  - Commissioner Roy questioned whether there would be an issue with the Commission issuing a notice of deficiency if, after submitting a determination notice, the Commission identified CIFs that did not align with statute and regulations.
    - EC Lopez believed that the Commission had a well-defined and detailed review process outlined in the regulations. She stated that the process entailed providing notice of the CIF determination to both the marijuana establishment and the host community. She explained that the notice offered the marijuana establishment the option to request an administrative hearing before an independent hearing officer to contest the Commission's determination. She noted that in the event the Commission agreed with the host community that the determination was reasonably related, the marijuana establishment would have the opportunity to challenge that decision. She also noted that the host community could also seek intervention to participate in the challenge. She mentioned that a licensee had the option to seek court intervention for an



- independent review of the impact fees, or alternatively, could choose to pay the fees.
- Commissioner Roy questioned whether it would be considered arbitrary and capricious to issue a notice of deficiency or a determination letter stating non-compliance, while technically allowing the same CIF to proceed based on the attestation.
  - EC Lopez clarified that Commissioner Stebbins' proposal entailed the option of exempting parties from the review process which would eliminate the need for the Commission to make any determination on that specific CIF. She explained that by leaving the decision of whether the CIF was reasonably related to the parties involved, the Commission would reduce the risk of being challenged as arbitrary and capricious. She cautioned that there could be significant risk of introducing disparate standards regarding what was deemed reasonably related which could potentially result in arbitrary outcomes for licensees who sought CIF review through the Commission compared to those who did not.
  - Commissioner Roy proposed an amendment to Commissioner Stebbins' language and expressed her willingness to withdraw the proposal if there was no consensus to adopt his language.
  - Commissioner Stebbins expressed a concern regarding the establishment of an additional reasonableness standard based on agreement between a host community and a marijuana establishment. He emphasized that the reasonableness standard should solely apply to challenged invoices.
    - DOL Potvin identified a conflict between the two provisions and noted that Commissioner Roy's proposed language contradicted the policy objective of reviewing based on established criteria. He further explained that the language would still require staff to review each community impact statement and invoice. He reiterated that the two different versions together undermined the proposed objective. He highlighted the distinction between reviewing CIFs and HCAs and indicated that the proposed policy would relinquish the Commission's authority to review CIFs.
    - Commissioner Roy raised a concern about the unintended consequence of potentially relinquishing the Commission's oversight and authority. She questioned if this consequence would arise due to the requirement of attestation by the two parties, which would grant them the right of oversight and authority over the matter. She expressed concern that the Commission would no longer retain its ability to oversee and exercise authority if it relied solely on a mutual agreement between the parties.
    - DOL Potvin clarified that the authority to review CIFs was established in Chapter 180. He emphasized that the Commission is not obligated to review these fees, as it was separate and distinct from the mandated host community agreement review. In response to Commissioner Stebbins proposal, he explained that if the parties agreed on the invoice amount for the CIF and represented it to the Commission with a mutual agreement, the Commission



and staff would not review based on the established criteria in the law and regulations. He addressed Commissioner Roy's concern and stated that the language used implied giving up the Commission's authority to review, approve and certify the CIF. He clarified that the policy, if adopted, would mean the Commission would simply not review it as part of its policy.

- Commissioner Roy raised concerns about potential arbitrary and capricious rulings by the Commission if determinations and compliance follow-ups varied for licensees with CIFs.
  - EC Lopez stated that while the risk of being challenged for arbitrary and capricious decisions seemed low, adopting a policy of abstaining from oversight in some cases could lead to arbitrary outcomes for licensees. She discussed the enforceability and legal challenges related to disparate treatment and the public accessibility of impact invoices. She also acknowledged that Commissioner Stebbins had raised a valid point earlier regarding the timing of when a licensee would pay the CIF. She questioned if this would introduce the possibility of another reasonably related standard based on the licensee's payment. She explained that the working group had not considered the scenario of a licensee paying during the 30-day window between receiving the fee from the host community and sharing the invoice with the Commission. She highlighted that the policy area of whether the licensee could pay during that window or not was still unexplored. She suggested that the Commission would need to make a policy statement regarding whether the licensee could or could not pay within the 30-day window before the Commission would assess and review CIFs.
- Commissioner Roy further questioned whether it would still be required for a licensee to transmit their community impact invoice to the Commission within a certain timeframe, as it could potentially reveal disparate treatment and potentially make the Commission vulnerable to legal challenges. She also emphasized the importance of impact invoices as public records.
  - EC Lopez informed Commissioner Roy that Commissioner Stebbins' proposal was limited to the review and certification process. She noted that the proposal stated that a host community within a marijuana establishment could be exempted from the CIF review and certification process as outlined in 935 CMR 500.184(c). EC Lopez clarified that the proposal did not seek exemption from the requirement of transmitting information between the licensee and the marijuana establishment, nor between the marijuana establishment and the Commission, as stated in 935 CMR 500.184(a).
- Commissioner Stebbins suggested allowing communities to pay an impact fee while contesting another impact fee. He highlighted that while the rules governing a marijuana establishment's ability to challenge an impact fee were still under review and awaiting a final decision, communities were allowed to pay impact fees they did not agree with. He raised a question whether the Commission would be responsible for making a decision on the contested impact fee and/or have the authority to assess



the reasonableness standard of the payment being allowed when reviewing an invoice.

- The Acting Chair stated that the Commission reviews every fee, irrespective of any assertions made by either party concerning compliance. She emphasized that the Commission makes determinations on every item under consideration.
- EC Lopez confirmed the Acting Chair's comment and stated that in accordance with the existing regulatory framework, the invoices are submitted directly to the Commission. She further explained that the Commission then conducts a compliance determination and subsequently issues a copy of that determination to the parties involved.
- Commissioner Stebbins questioned whether the Commission's authority only pertained to decisions on contested matters or if it extended to contesting payments made by the establishment.
- The Acting Chair confirmed that the Commission had the authority to make a determination on the entire package of fees.
- DOL Potvin acknowledged the potential scenario of a licensee having already made a payment and provided a numerical example to illustrate the issue. He clarified that the Commission's role was limited to certifying based on its granted authority, and any reimbursement discussions would be between the licensee and the municipality. He suggested including an advisory in a guidance document to emphasize the Commission's responsibility for certifying amounts and advise licensees to wait for the Commission's certification before making payments. He expressed that while guidance documents could provide proper procedures, there remained a real possibility of such situations occurring. He noted that in such cases, it was likely that either the municipality would voluntarily reimburse the licensee or litigation would be necessary.

Commissioner Roy moved to take a five-minute recess.

- Commissioner Stebbins seconded the motion.
- The Acting Chair took a roll call vote:
  - Commissioner Camargo – Yes
  - Commissioner Roy – Yes
  - Commissioner Stebbins – Yes
  - Acting Chair Concepcion – Yes
- The Commission unanimously approved taking a five-minute recess, returning at 11:31AM (02:02:34)
- Commissioner Stebbins sought assistance in locating language within the regulations pertaining to the payment of a CIF by marijuana establishments.
  - EC Lopez located the language in question and proceeded to read it aloud to the Board.



- Commissioner Stebbins expressed concerns about the reasonableness standard and the potential implications of allowing marijuana establishments to pay parts of the CIF while contesting certain portions before the Commission.
- EC Lopez clarified that the regulations are designed to follow a review and certification process. She explained that the claimed CIF is the initial assessment by the host community, and it becomes properly due and payable upon certification by the Commission, unless disputed by the marijuana establishment.
- Commissioner Stebbins sought clarification on whether the payment obligation for the agreed-upon CIF comes after the review process.
- EC Lopez clarified that the Commission intentionally used the term “claimed CIF” to address what the host community asserted but had not yet been reviewed and certified by the Commission. She stated that for an impact fee to qualify as a CIF, it would need to be reasonably related. She explained that a CIF would become due and payable unless disputed by a marijuana establishment.
- Commissioner Stebbins shared his understanding of Section 7 that it pertained to a post-review scenario where a marijuana establishment agreed to pay a CIF to its host community. He emphasized that this payment is part of the overall reasonable assessment made during the review process. He raised concerns about the clarity of the process.
- EC Lopez confirmed that it is a post-review scenario and that disputes could still be pursued through the administrative hearing process or the courts.
- Commissioner Stebbins suggested adding language to clarify that the payment obligation would be subject to non-frivolous legal disputes through the Commission's hearing process or a court of competent jurisdiction. He, ultimately, chose to withdraw his proposed language to allow the discussion to move forward.
- The Board reached a consensus on the clarifying language for section eight regarding the payment of CIFs.
- AGC Baker introduced 935 CMR 500.181(1)(2) on “Minimum Acceptable Equity Standards Governing Municipalities and Host Communities”.
  - No issues were raised by the Commissioners in Subsections (1) and (2).
- AGC Baker introduced Subsection (3), “Equity Standards for Host Communities to Promote and Encourage Full Participation in the Regulator Marijuana Industry.”
  - Commissioner Camargo recommended creating a model ordinance or bylaw to ensure transparency and fair standards across municipalities.
  - EC Lopez suggested creating a guidance document rather than incorporating an ordinance or bylaw into the regulations.
  - AGC Baker expressed agreement with EC Lopez’s suggestion to create a guidance document rather than a model ordinance.
  - Commissioner Stebbins supported the idea of a model ordinance similar to the model HCA that would provide an understanding of compliance with the Commission's goals.



- The Acting Chair expressed confusion about the term "model" and suggested simplifying the language by directly stating the desired provisions for presumption.
- Commissioner Camargo clarified that the concept was to create a supportive document through guidance for municipalities to adopt.
- Commissioner Stebbins suggested adding a new option Section 2, to the language regarding the minimum acceptable Equity standards. He explained this option would involve adopting a model ordinance or bylaw created by the Cannabis Control Commission, which would serve as a step for municipalities to meet the Commission's standards.
- Commissioner Roy raised concerns about the sustainability and geographic equity of the requirement related to participation rates from communities disproportionately affected by marijuana prohibition.
  - Commissioner Camargo explained that the language was derived from the delivery and marijuana carrier evaluation criteria already in the regulations.
  - Commissioner Roy highlighted that circumstances have changed, and the stakes were now higher. She noted that the regulations now entail the possibility of communities forfeiting all their CIFs, with a different standard in place. She stated that penalties can be imposed on communities that fail to comply. She mentioned that it is important to note that not all towns have agreed to participate.
  - The Acting Chair clarified that adopting the language was not a requirement but a way for cities to meet the minimum Equitable standards.
- Commissioner Stebbins supported incorporating Commissioner Camargo's proposed language and emphasized the importance of having the model ordinance as an option.
  - Commissioner Camargo agreed with the addition of the model ordinance and proposed adding a specific time frame of three years or until the goals of the exclusivity period have been met.
  - Commissioner Stebbins sought clarification from Commissioner Camargo on the existing language in Section 1, which stated "for an extended period of time." He then referred to Section 2 and mentioned the possibility of the Model Ordinance or Bylaw containing different language that could potentially address a three-year period if a community chose to adopt the Commission's model.
  - Commissioner Camargo expressed her preference for including the language, "for three years or until the goals of the exclusivity period have been met." She emphasized the importance of its placement and believed it should be included in the regulations rather than just guidance documents. She acknowledged the need for consensus on its inclusion but stressed the significance of clearly stating this requirement. She recognized the focus on guidance but emphasized the value of having it explicitly mentioned in the regulations, even if not a requirement, as it would be presumed to ensure compliance.





- The Acting Chair sought clarification on whether Commissioner Camargo wanted to revise Section 1 to include the proposed language while considering a separate Section 2 that would encompass the model ordinance language.
  - Commissioner Camargo agreed with that approach and presented her proposed language for both options.
  - AGC Baker pointed out that the extended period of time in the revised Section 1 remained vague and suggested a potential revision.
  - Commissioner Camargo agreed with the revision and requested that the revised language be shared for review.
- Commissioner Roy inquired about the omission of data collection and reporting by municipalities.
  - Commissioner Camargo clarified that data collection was addressed in Section 2. She also mentioned the need to determine whether the goals would be included in the regulations or guidance. She also proposed adding a section on developing criteria for evaluating the goals of the exclusivity period, either as part of Section 6 or a separate section.
- The Acting Chair presented the revised wording for Section 1, and the discussion continued regarding the classification of the language.
  - Commissioner Roy sought clarification on how to classify the different elements, particularly Section 1, and requested further explanation on how communities would ascertain the information.
  - Commissioner Camargo suggested focusing on establishing the language first before addressing the operational aspects. She proposed adding goals to provide direction or guidance for the exclusivity period.
  - AGC Baker read proposed language.
- Commissioner Stebbins explained that communities would adopt their own ordinances or bylaws with stipulations that would remain in effect until the goals of the exclusivity period were met. He noted that the determination of meeting these goals would be made by each municipality. He expressed that the progress could be addressed separately as a new regulation.
- Commissioner Camargo explained that the three-year period was a good starting point, considering the time it usually takes for businesses to become profitable. However, she clarified that the three-year period was not mandatory and that longer periods were also acceptable.
- Commissioner Roy raised a question about how communities would demonstrate that the goals of exclusivity have been met.
  - Commissioner Camargo mentioned that the criteria and outlines for the goals could be part of the Equity plan developed by the host community.
  - The Chair agreed that the determination of meeting the goals should be left to the municipality, aligning with Commissioner Stebbins' earlier statement.
- Commissioner Roy emphasized the importance of data collection to demonstrate the number of social Equity businesses in a community.
  - Commissioner Camargo expressed her support for data collection and clarified that having clearer language in the regulations would facilitate this.



She also mentioned the towns that are still in the process of implementing social Equity measures.

- EC Lopez reassured the group that the proposed language would not limit what a municipality could do, as the statute would allow them to establish additional procedures and policies to promote Equity.
- Commissioner Camargo suggested adopting AGC Baker's revised draft for options Section 1 and Section 2. She also expressed her preference for including the goals in the regulations but was open to reaching a consensus on whether they should be included in the regulations or provided as guidance.
  - The Chair requested to hear the complete amended language, including the goals, to better understand its potential impact if adopted into the regulations.
- Commissioner Stebbins expressed the Commission's interest in evaluating the success of municipal efforts and discussing data reporting requirements. He encouraged revisiting the extended period of time in option Section 1 to avoid locking local municipalities into a specific timeframe.
- Commissioner Camargo mentioned incorporating evaluation criteria into the model ordinance or bylaw and agreed that some measurements could be included in guidance for more flexibility. She read the proposed language for the goals, including criteria for evaluating the accessibility period and data collection and reporting by the host community. Commissioner Camargo suggested removing the mention of the Commission and replacing it with "host community" in the language.
- Commissioner Roy raised a question regarding registered agents and how municipalities would ascertain the information and account for fluidity in job positions.
  - Commissioner Camargo acknowledged the need to consider this issue and explained that including the language was meant to provide a ballpark estimate for host communities.
  - Commissioner Roy expressed concern that crediting individuals who work in different municipalities might devalue the intended impact.
  - Commissioner Stebbins noted that the evaluation and assessment criteria discussed would be relevant for the exclusivity period for delivery operators and license categories. He suggested incorporating many of these considerations into the model bylaw or ordinance and the guidance provided. He also mentioned that some of the requirements were already addressed in the section concerning the components of a host community's plan and the data requirements.

Commissioner Stebbins moved to take a twenty-five-minute recess.

- Commissioner Camargo seconded the motion.
- The Acting Chair took a roll call vote:
  - Commissioner Camargo – Yes
  - Commissioner Roy – Yes
  - Commissioner Stebbins – Yes
  - Acting Chair Concepcion – Yes



- The Commission unanimously approved taking a twenty-five-minute recess, returning at 1:30PM (03:57:19)
- AGC Baker guided the Board's attention to the Municipal Equity section, 935 CMR 500.181(3)(a)(1).
- Commissioner Camargo took the previous conversation into consideration and proposed an amendment to Section 1. She read the revised language as follows: "adopting the model ordinance or bylaw created by the commission to license social Equity businesses for three years or until the goals of the exclusivity period have been met." She addressed Commissioner Roy's questions about goals and data collection, suggesting that guidance could be developed after the regulations are established to assist municipalities. She reiterated that the requirement was presumed, not mandatory.
  - Commissioner Stebbins sought clarification, and confirmed that under this section, municipalities would only be presumed in compliance if they adopted the Commission's ordinance or bylaw which would eliminate the option for municipalities to create their own.
  - Commissioner Camargo affirmed that municipalities would indeed have only that option under this section to achieve presumed compliance.
  - Commissioner Stebbins expressed disagreement with Commissioner Camargo's proposed language and stated that it deviated from the process established in the HCA. He believed that communities should have the freedom to be creative and adopt their own standards, regardless of their size. While he appreciated the goal of encouraging higher standards through a model ordinance, he was hesitant to restrict municipalities like Boston or smaller communities from pursuing their own approaches. He suggested keeping option Section 1 as it was and incorporating Commissioner Camargo's language as option Section 2. He recommended reviewing subsection Section 2, which addresses the development of a host community plan, to determine if it influenced the need for options Section 1 or Section 2.
  - Commissioner Camargo read the amended language.
  - Commissioner Stebbins expressed agreement with Commissioner Camargo's amended language.
- Commissioner Roy sought clarification regarding the inclusion of options Section 1 and Section 2 in the regulations and goals being addressed in guidance.
  - Commissioner Camargo confirmed that the goals would be covered in guidance after the regulations were established.
- EC Lopez provided an amendment to remove commas around "or bylaws" to clarify that the model ordinance or bylaw would be a single document created by the Commission.
- Commissioner Roy raised a point about municipalities not licensing businesses.
  - EC Lopez clarified that the term "permitting" had been used instead of "licensing" in previous discussions.



- The Acting Chair agreed to use the term "permitting" for consistency.
  - The Board unanimously expressed agreement with the revised language for options Section 1 and Section 2.
- AGC Baker guided the Board to the next section of the Municipal Equity portion, subsection (b).
- Commissioner Camargo sought clarification on the meaning of "local approval process" in Section 3, Section 2.
  - EC Lopez explained that "local approval process" referred to a newly defined term created by the working groups.
  - Commissioner Camargo suggested changing "local approval process" to "commenced operations"
  - DOL Potvin provided additional information on the distinction between obtaining a final license and commencing full operations.
  - The Acting Chair confirmed the proposed change, and the language was revised accordingly.
  - The Board reached a consensus on the amendment.
- AGC Baker guided the Board to the next Section (c).
- Commissioner Camargo raised a question about the wording of "develop a plan" and suggested using "equity plan" to explicitly refer to the focus on equity. She also inquired about the review process for the municipality's equity plan and whether it would come before the Commission for review.
  - The Acting Chair discussed the specific review process and comparison to positive impact plans or diversity plans.
  - Commissioner Camargo expressed the need for a more active role in reviewing and improving municipalities' equity plans. She acknowledged that it would be an additional task but emphasized the importance of understanding and assessing the equity plans. She requested input from the attorneys regarding the Commission's authority to approve or disapprove host communities' positive impact plans.
  - DOL Potvin referenced a section that required host communities to adopt local rules or bylaws by a specific date and submit an attestation affirming compliance with the regulations. He highlighted the existing notification requirement and the distinction between notification and approval processes for different types of changes in license status.
  - Commissioner Camargo proposed the development of language to address the approval process and the inclusion of an Equity plan in the regulations. She emphasized the need for the Commission to have an active role in reviewing municipalities' Equity plans and suggested that simply posting them on the website would not be sufficient.
  - Commissioner Stebbins echoed the concern about the Commission's ability to review the plans and raised the possibility of relying on complaints as a way to assess plan compliance.
  - EC Lopez highlighted the Commission's pre-existing obligation to establish procedures and policies for promoting Equity participation and positive



- impact on communities. She suggested that the same statutory provision could be used to support the Commission's review of host communities' plans.
- Commissioner Roy sought clarification on the specific actions the Commission would take in reviewing the plans.
  - Commissioner Camargo acknowledged the need to define the review process and noted that many towns currently lack Equity plans.
  - Commissioner Roy raised concerns about licensees not meeting their diversity and positive impact goals, and the lack of enforcement mechanisms. She asked about the implications for municipalities and whether there were any punitive measures.
    - Commissioner Camargo suggested that the Commission should have the ability to review Equity plans submitted by municipalities, rather than just having them posted on the website. The discussion emphasized the need for guidance and clarity on the review process and the Commission's role in ensuring Equity needs are met.
    - Commissioner Stebbins mentioned that the Commission has the authority to deny license renewals if licensees consistently fail to meet their obligations. He noted that while this action has not been taken yet due to the Commission's relative newness in the process, he believed that it is a condition that could be used as a reason for not renewing a license.
    - DOL Potvin emphasized that the aim is for businesses to succeed, comply with regulations and have their licenses renewed. He mentioned that, to his knowledge, license renewals have never been denied. He cautioned against tying the municipal requirement to the licensee's renewal process and requested further clarity on the matter.
    - Commissioner Stebbins expressed the need to determine where the Commission has authority and where it lacks it. He acknowledged the ability to deny license renewals if applicants fail to fulfill their obligations under positive impact or diversity plans. He emphasized the importance of not overburdening municipalities and establishing a minimum requirement that aligns with community resources. He discussed the process of adopting local rules and submitting attestations to the Commission by a specified date. He emphasized the importance of solid and well-thought-out plans and highlighted the possibility for interested parties to file complaints alleging non-compliance with Equity requirements. He noted that the Commission has the power to render judgments and impose fines on host communities if necessary. He mentioned that the goal was to address potential loopholes and ensure effective oversight and enforcement.
    - DOL Potvin mentioned that the draft regulations already have compliance measures in place, including a deadline of May 1, 2024, for municipalities to comply with the section. He highlighted that host communities is a defined term and emphasized the potential impact of non-compliance, such as fines equal to the community impact fees collected from licenses. He acknowledged that Commissioner Camargo's preference for municipalities to apply and see approval for their plans but raised concerns about the additional administrative



requirement it might impose. He noted that seeking approval at this point could be problematic. He remarked that regardless of the approval process, if municipalities failed to comply, the Commission would receive notifications and initiate inquiries that could potentially lead to investigations and enforcement actions as outlined in the draft regulations. He concluded that compliance measures were established to incentivize municipalities to adhere to the section's requirements.

- EC Lopez pointed out that the legislature explicitly gave the Commission the authority to hold municipalities accountable and impose penalties for non-compliance.
- Commissioner Camargo expressed the importance of reviewing and approving Equity plans submitted by municipalities and highlighted the Commission's power and authority in this regard. She discussed the possibility of providing guidance and feedback to municipalities to help them develop their plans and ensure compliance. She noted the importance of supporting municipalities rather than punishing them and to consider the challenges they may face in implementing Equity initiatives.
- EC Lopez acknowledged that the compliance implementation process required preparation and time. She indicated that the new law represented a significant overhaul for municipalities, licensees and the Commission and expanded oversight powers particularly equity actions or inactions at the local level. She emphasized that it was challenging to predict the exact outcome and standards until the regulations were finalized. She explained that the draft regulations currently outlined a complaints, investigation, fines and administrative hearing process that align with the Commission's existing approach to handling such matters.
- Commissioner Camargo posed a question about the potential for an attestation process to modify or adjust the municipality or host community's compliance with the regulations. She inquired if utilizing an attestation form or a similar mechanism could serve as a means to effect changes within the community.
  - DOL Potvin explained that the Municipal Equity section carries significant weight for ensuring compliance. He indicated that the attestation requirement which is already included in the draft regulations under Section (c), mandates that a host community submit an attestation affirming their compliance with the Commission's requirements. He noted that while the attestation serves as an initial record, it is not sufficient on its own. He stated that in cases where a complaint is filed, the Commission has the power to enforce the law with significant consequences for non-compliant municipalities.
- Commissioner Roy inquired about the entity responsible for assessing the forfeiture of funds and determining non-compliance penalties. She also sought information on the government agency tasked with making these determinations.
  - DOL Potvin stated that in the case of non-compliance with the Commission's regulations by the host community, the responsibility for assessment would lie with the Commission itself. He expressed a belief that this process would





involve notifying the municipality and engaging in a back-and-forth exchange. He noted that the aim would be for the municipality to adopt and comply with the required policies. He believed that if the municipality continued to be non-compliant, the Commission would have the authority to issue a notice detailing the violation, the fine amount and its allocation.

- The Acting Chair posed a follow-up question, referencing DOL Potvin's earlier mention of complications in reviewing, approving and disapproving Municipal Equity plans. She acknowledged the Commission's authority to declare non-compliance by a municipality which would lead to potential fines. She sought clarification on the suggestion of taking an additional step. She requested a restatement of the complications and limitations related to the Commission's ability to approve or disapprove of Municipal Equity plans.
  - DOL Potvin clarified that he did not believe the Commission lacked the authority to perform those actions. He expressed that the Commission, as a body, could adopt policies to review and approve Municipal Equity plans. He remarked that his concern was not about the policy itself, but rather the process and procedure involved. He highlighted that changing the requirement from a notification to a regulatory approval at this stage could trigger a separate notification, public hearing and public comment period as per the procedures outlined by the Secretary of the Commonwealth for government agency regulations. He acknowledged the need for input from the legal team for a definitive opinion, as this change could require municipalities to seek approval for significant modifications that may fall outside the scope of the initial notice given to the public. He emphasized that his concern was primarily focused on the processing of the policy rather than the Commission's authority to enact it.
  - Acting General Counsel, Andrew Carter (AGC Carter) acknowledged the concern and emphasized the importance of remaining within the scope of the draft regulations to avoid future legal challenges. He also noted that the Board had the authority to determine its own schedule for promulgating regulations and suggested revisiting the issue during the process of developing Social Consumption regulations. He acknowledged that ultimately, the final decision on whether to proceed with the change rested with the Board.
  - The Acting Chair questioned how the threshold for scope, specifically how the proposed change could fall outside of the scope when the draft regulations already accounted for the Municipal Equity plan. She pointed out that the draft regulations included a requirement for the publication of Municipal Equity plans. She sought clarification on why this change would be considered outside the scope when the creation and publication of the plan were already addressed in the draft.
  - AGC Carter stated that the scope was ultimately determined by the Board. He acknowledged that if the notice regarding the proposed change was deemed satisfactory and provided a reasonable amount of notice, it would be considered as further development of a specific regulation falling within the



scope. He emphasized the need for caution in navigating this issue. He expressed the importance of being careful and ensuring that the progress made thus far in the process is maintained on solid ground, considering the extensive work invested in it.

- Commissioner Roy inquired about the possibility of incorporating the proposed change into the Social Consumption framework in the future. She suggested considering whether it could be included within the scope of the Social Consumption regulations to avoid the need for a separate promulgation process.
  - AGC Carter noted that the situation being discussed was similar to the previous delivery issue raised by DOL Potvin. He mentioned that, out of caution, the Board had conducted additional hearings and continued the process to minimize the risk of future challenges. He emphasized that the level of risk tolerance would ultimately determine the approach. He also pointed out that previous iterations did not have the same time constraints as the current situation. He mentioned that the last statutory deadline was for the entire set of regulations during the initial promulgation, where everything was within the scope. He acknowledged that the Board, as the agency's leadership, had the authority to make the final decision on this matter.
- The Acting Chair questioned whether it would be within the Commission's scope to include a provision for the Commission to receive those plans, without implementing an approval process. She highlighted the existing language in the draft regulations which states that the plans should be published in a conspicuous location within the host community's office and website.
  - DOL Potvin concurred with AGC Carter's remarks regarding risk appetite. He stressed the need for caution at the present stage and believed that the level of risk had considerably diminished. He proposed a modification to the requirement and suggested that an attestation be included along with verified documents and plans as a single package submitted to the Commission. He clarified that the municipal equity aspect fell within the scope but acknowledged that modification of the process could raise concerns. He believed that the proposed modification would effectively reduce the risk.
- DOL Potvin read through 935 CMR 500.181(3)(c) and addressed the proposed modification.
- Commissioner Camargo requested the inclusion of the word "Equity" under 935 CMR 500.181(3)(2).
- EC Lopez read proposed language for Subsection (d).
  - The Board reached consensus on the proposed language.
- AGC Baker proceeded to read 935 CMR 500.181(3)(c)(1) and addressed the proposed modifications.
  - The Board encountered confusion and adjustments were made to the language, particularly in Subsection (c) regarding pre-verified individuals or entities.
  - EC Lopez suggested including pre-verified individuals or entities to the language.



- The Board proposed various versions of the language, including considerations for individuals of African American, Hispanic, Latino, Native American, or indigenous descent.
- Commissioner Stebbins pointed out a missing inclusion of Social Equity businesses in the introduction paragraph of the regulations.
  - EC Lopez proposed language that encompassed pre-verified individuals or entities, Social Equity businesses, and licensed applicants designated as Social Equity program (SEP) participants or Economic Empowerment Priority applicants (EEPA).
  - The Board reached consensus on the proposed language.
- AGC Baker proceeded to read the proposed language relative to Section (c) of 935 CMR 500.181.
- Commissioner Roy raised a question regarding the scenario where no applicants from the identified groups applied for additional licenses in a community. She questioned that if none of these groups applied would the licenses remain unissued.
  - DOL Potvin acknowledged the possibility of interpreting Commissioner Roy's scenario in a specific way. He explained that, hypothetically, if the application numbers were to increase, the Commission could issue two additional licenses while adhering to the existing provision. He believed that in this situation, the Commission would have a license or a host community agreement but would not be able to grant permission to another business unless it met the necessary qualifications.
- Commissioner Roy referred to the Massachusetts Municipal Association (MMA) and read some of their testimony. She stated that the testimony questioned whether the draft regulations should include an option for a retention period, during which licenses would be reserved for Social Equity applications.
  - The Acting Chair asked Commissioner Roy if she had a proposed change.
  - Commissioner Roy expressed her intention to gauge the opinions of her fellow commissioners. She sought agreement on the idea of implementing a retention period during which licenses would be reserved for Social Equity applications, and if none came forward within that period, the licenses could be issued to other individuals or entities. She suggested that if the retention period elapsed without any applicants coming forward, the licenses could then be issued to other individuals, entities, or applicants.

Commissioner Stebbins moved to take a five-minute recess.

- Commissioner Camargo seconded the motion.
- The Acting Chair took a roll call vote:
  - Commissioner Camargo – Yes
  - Commissioner Roy – Yes
  - Commissioner Stebbins – Yes
  - Acting Chair Concepcion – Yes
- The Commission unanimously approved taking a five-minute recess, returning at 3:32PM (06:16:22)



- The Acting Chair thanked stakeholders for their engagement and the submission of comments.
- Commissioner Roy read an email from Kevin Gilnack in which he expressed concerns about undermining equity policies and proposing solutions for unused licenses.
  - Commissioner Stebbins proposed giving communities the opportunity to ask questions relative to Social Equity plans.
  - Commissioner Roy expressed concern whether the existing provision would withstand legal scrutiny while ensuring the protection of the Commission.
  - EC Lopez provided guidance and stated that the Commission has the authority to establish policies aimed at promoting equity. She emphasized that noted that it was relevant determining a time frame was a policy decision within the Commission purview to make.
  - AGC Carter shared his perspective on the question of timing and expressed that it was directly relevant to the policy debate. He concluded by stating that the final decision regarding comfort level rested with the Board.
  - Commissioner Roy reiterated her question whether the provision would withstand legal scrutiny.
  - AGC Carter responded to Commissioner Roy's question and echoed EC Lopez's statement that the provision was connected to the statute. He recognized that any regulations they promulgated would inevitably face some level of challenge. He emphasized that the primary objective of the Board was to ensure that the promulgated regulations were consistent with statutory authority. He reiterated that operating within the confines of the statute provided the safest framework for the Board.

Commissioner Camargo moved to take a fifteen-minute recess.

- Commissioner Roy seconded the motion.
- The Acting Chair took a roll call vote:
  - Commissioner Camargo – Yes
  - Commissioner Roy – Yes
  - Commissioner Stebbins – Yes
  - Acting Chair Concepcion – Yes
- The Commission unanimously approved taking a fifteen-minute recess, returning at 4:15PM (06:43:22)
- AGC Baker provided an overview of 935 CMR 500.181(3)(d) which states that host communities must adopt local rules or bylaws to comply with the specified section.
- AGC Baker moved on to 935 CMR 500.181(3)(e) which allows any interested person to file a complaint with the Commission alleging non-compliance with an Equity requirement. He continued reading other Sections.
- Commissioner Camargo inquired about the term "Equity parties" and whether it needed a definition.



- EC Lopez explained that the term was introduced to specify the parties involved in negotiations, including Social Equity businesses, licensed applicants, and pre-verified individuals/entities.
  - Commissioner Camargo sought confirmation from the Commission that the definition provided was sufficient.
  - The Board agreed that the current language adequately addressed the term.
- Commissioner Stebbins inquired about the possibility of adding Social Equity business to Section (a).
  - EC Lopez inquired if the concern was around the clarity of the last sentence regarding Equity parties and application renewals. She discussed the renewal of licensure and the potential need to renegotiate an HCA. She questioned whether Social Equity businesses should be included in the negotiation process, along with licensed applicants who qualify for Social Consumption Program (SCP) or Economic Empowerment Applicant (EEA) statuses.
- DOL Potvin explained that Equity Standards for host communities during negotiations with Social Equity businesses and licensed applicants were outlined in 935 CMR 500.181(4)(a). He noted that while “Equity parties” was not a defined term, he believed it was intended to encompass Social Equity businesses according to the Municipal Equity Working Group. He suggested amending the designation to EEPA or both. He noted that the decision of including pre-verified or verified Social Equity businesses in this subsection likely involved a policy determination by the Commission. He acknowledged that the section presented an opportunity for the Board to adopt a policy that included verified or pre-verified Social Equity businesses.
- The Acting Chair acknowledged a drafting error, and the need to amend the section was recognized.
- DOL Potvin emphasized the important distinction between pre-verified and licensed Social Equity businesses, especially during the initial application for licensure. He recognized that license renewals, pre-verified and verified Social Equity businesses should be considered to ensure access and benefits for the entire eligible population. He suggested including both pre-verified and verified Social Equity businesses in negotiations for new license applications and renewal applications.
- Commissioner Roy raised the issue of whether already established Social Equity businesses seeking additional licenses should be prioritized.
  - DOL Potvin clarified that including them as licensed applicants who have already been designated as SCP or EEA would cover their situation adequately. DOL Potvin discussed that interpretation of the current language and the need to ensure that the policy would effectively achieve its goals without leaving anyone behind due to technicalities.
- The Board explored the definition of a Social Equity business and its inclusion in the negotiation process for licensure and renewal.
- Commissioner Stebbins raised concerns about the current definition, which only referred to individuals who had been in the SCP or Economic Empowerment.



- Commissioner Roy suggested reversing the strikeout of "or otherwise eligible" to cover the intended scope.
  - EC Lopez advised against it, highlighting that the legislature had defined Social Equity businesses as limited to licensed establishments.
  - The Board considered the legal advice and concluded that the strikeout should remain.
- Commissioner Stebbins expressed his desire to revisit the definition of Social Equity business. He noted, that according to the statute, a marijuana establishment, including retailers, cultivators, testing labs and product manufacturers, should have a majority ownership of at least 51% by individuals who are eligible for the Social Equity program under Section 22 or whose ownership would qualify as EEPA.
  - EC Lopez stated that a marijuana establishment is already a licensed entity. She clarified that the individuals within that establishment are considered eligible and indicated that the Commission had already made an eligibility determination or their ownership qualifies them as an EEA. She emphasized that using the phrase "or otherwise qualifies" would introduce a future-looking element, which is not covered by the statute.
- Commissioner Stebbins revisited the definition of Social Equity business. He noted that the legislature had written the new definition in a way that referred to individuals who had gone through the Social Equity program and been certified rather than including those who may have been eligible.
  - EC Lopez confirmed Commissioner Stebbins' understanding and explained that the language should be interpreted at face value unless it was ambiguous.
  - Commissioner Camargo introduced the concept of an Equity Participant definition and suggested that it could be beneficial in the future but acknowledged that it might be out of scope for the current discussion.
- Commissioner Roy questioned whether the threshold for majority ownership in the Social Equity business definition aligned with the EEPA definition.
  - DOL Potvin addressed the interpretation of majority ownership as anything greater than a certain percentage. He noted that due to a new statute, businesses with ownership below that percentage may be affected and lose certain benefits. He suggested that a regulatory change would be required to address this issue.
  - Commissioner Roy acknowledged the complexity of the situation and asked if there was a temporary solution.
  - DOL Potvin explained that using multiple terms to identify the affected population could be a temporary fix.
  - Commissioner Roy agreed with this approach to ensure that the population is not excluded.
- AGC Baker inquired about clarifying the changes that were being made, either through the definition or under Section (4)(a). He wanted to ensure that the record accurately reflects reflected the decisions that had been made.





- The Acting Chair proposed not making any modifications. She inquired with her fellow commissioners if they were all in agreement to maintain the current definition without implementing any changes.
- Commissioner Roy raised concerns about leaving the current definition unchanged, as it could exclude certain individuals until further revisions are made.
- DOL Potvin provided an explanation, stating that Social Equity businesses should include both verified and pre-verified license holders. Commissioner Stebbins expressed broader concerns about the definition and the need to capture a larger group of individuals through pre-verification.
- The Board's discussion revolved around ensuring that the definition included both current license holders and those who would be eligible but not yet licensed.
- Commissioner Roy questioned the accuracy of the title in Subsection 4(a).
  - DOL Potvin suggested changing the statutory definition of "Social Equity Business" to "Social Equity Parties."
  - The Board reached consensus and agreed to change the title to "Equity standards for host communities during HCA negotiations with Equity parties."
- AGC Baker proceeded to read the next sections.
- Commissioner Roy raised a question regarding the inclusion of "good faith" in the HCA (Host Community Agreement) section and its absence in other sections.
  - EC Lopez stated that she believed the inclusion of this point was intended to address the implied warranty of good faith and fair dealing in any contract negotiation. She mentioned that the point being made was perhaps to explicitly state it, but she also noted that the Commissioners had the option to remove it if they wished.
  - Commissioner Roy inquired why the provision was not applicable or recommended for HCAs in general.
  - EC Lopez explained that the discussion of bad faith versus good faith arose in the context of discontinuing operations. She expressed that the question was whether a host community could impose a good faith requirement when ending a relationship, which served the same purpose as prohibition against bad faith. She noted that the latter approach would be easier to handle during an investigation. She acknowledged Commissioner Roy's point but clarified that the current provision focused on affirmative actions that the host community must take during HCA negotiations with an equity party. She indicated that if the bad faith angle were to be explored further, it would likely fall under prohibited practices rather than the actual affirmative actions in the negotiation process.
  - Commissioner Roy inquired about the feasibility of incorporating the discussed provision into regular negotiations. She suggested negotiating the terms of an HCA in good faith under the section pertaining to affirmative actions.



- EC Lopez confirmed that the Board had the authority to explore the suggestion brought up by Commissioner Roy if it was something the Body wished to pursue.
- AGC Baker read Section (d), Prohibitive Practices
  - Commissioner Roy proposed adding language as a standalone Section (4).
  - The Board reached consensus on the proposed language.
- The Board moved on to discussing the inclusion of affirmative obligations for host communities in the general negotiation process.
  - The Board reached consensus on the proposed language.
- AGC Baker read 935 CMR 500.181(5)(a) which addressed the donation of a minimum of three percent of each CIF to the Cannabis Social Equity Trust Fund.
  - Commissioner Stebbins raised concerns about the language and suggested striking the entire Section (a).
  - Commissioner Camargo questioned whether the language in Section (b)(1) was present elsewhere in the regulations, as it seemed to imply that only licensees could donate. She expressed her understanding that if the language was already included, striking it would be unnecessary. She wanted to ensure that the requirement to commence operations for donation was still present, as it would be a matter for policy discussion.
  - Commissioner Roy questioned the requirement for licensees to have authorization to commence operations in order to donate to the Trust Fund.
- The Acting Chair inquired if EC Lopez had any insights regarding the potential impact or consequences that would arise if the language in question was removed.
  - EC Lopez explained that the language in question was initially included as placeholder to ensure compliance with statutory obligations. She stated the matter had not been previously explored as a policy issue. She indicated the statute mandated that the Commission establish criteria for licensees to fulfill their Positive Impact Plan (PIP) requirement by donating a percentage of their revenue to the trust fund.
  - DOL Potvin noted that the obligation to positively impact areas of disproportionate impact as applied to applicants and licensees was now required by statute. He referred to a provision in Chapter 180 which mandated the Commission to establish minimum acceptable standards for host communities to positively impact disproportionately harmed communities. He explained that host communities had a role to play in positively impacting areas of disproportionate impact. He addressed a minor issue regarding the language related to licensees needing authorization to commence operations in order to donate to the Cannabis Social Equity Trust Fund. He highlighted that Commissioner Roy's concern was not wanting to prohibit or eliminate the possibility of someone with a final or provisional license from donating. He explained that there was currently an understanding that applicants or licensees who had not yet commenced operations were expected to fulfill the majority of their goals which included making donations once they started generating revenue. He noted that the existing language limited the population



to only those who had commenced operations. He recommended to strike Section (1).

- Commissioner Roy expressed agreement with DOL Potvin proposal to strike 935 CMR 500.181(5)(b)(1). She noted that keeping the language would unintentionally harm the fund by limiting donations. She pointed out that some individuals remain in the provisional phase for an extended period and may have the resources and willingness to donate. She emphasized that restricting the ability to contribute would have unintended consequences and negatively impact the fund.
- EC Lopez questioned whether the Board was ready to discuss and determine the criteria for donation. She emphasized the need for criteria to be established as it was an obligation mandated by the statute.
  - The Acting Chair made an executive decision and stated that more time was needed to thoroughly discuss the matter at hand. She emphasized the importance of creating criteria for municipalities, entire communities and licensees to follow. She recognized the potential for confusion and proposed putting a pause on the discussion and returning to it the following day to ensure a clearer and more focused approach.

### 3) Adjournment – 08:59:23

- Commissioner Stebbins moved to adjourn.
- Commissioner Camargo seconded the motion.
- The Acting Chair took a roll call vote:
  - Commissioner Camargo – Yes
  - Commissioner Roy – Yes
  - Commissioner Stebbins – Yes
  - Acting Chair Concepcion – Yes
- The Commission unanimously approved the motion to adjourn.

