Cannabis Control Commission

COMMONWEALTH OF MASSACHUSETTS

Guidance for Municipalities on Equity and Host Community Agreements

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Massachusetts Cannabis Control Commission

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I. Introduction

This guidance document is part of an ongoing dialogue between the Cannabis Control Commission (Commission), municipal officials and the Cannabis Advisory Board and addresses issues raised by municipalities and applicants seeking to operate medical- and adult-use businesses. The Commission seeks to support municipalities in establishing fair, transparent, and equitable processes at the municipal level.

Under the "Local Control" provisions of G. L. c. 94G, § 3, municipalities have the authority to negotiate and enter into a Host Community Agreement (HCA) with Medical Marijuana Treatment Centers (MTCs) and Marijuana Establishments (MEs) and to regulate other aspects of the operation of MEs and MTCs. Given that an applicant must navigate municipal processes before the Commission considers its licensing application, municipalities play an early and essential role in selecting applicants, including whether Certified Economic Empowerment Priority Applicants and Social Equity Program Participants (collectively Social Equity Applicants) will be able to be considered for licensure by the Commission and become part of this emerging industry.

Under G. L. c. 94G, § 4 and G. L. c. 94I, the Commission has the authority to regulate the state licensing and registration processes for the medical- and adult-use marijuana programs (Marijuana Programs). The Commission will not issue a provisional license to an applicant unless (a) the applicant and municipality have executed a host community agreement[1]; (b) the applicant has held a community outreach meeting within six months of applying for licensure[2]; and (c) the applicant is compliant with local ordinances and bylaws.[3]

Under G. L. c. 94G, § 4, the Commission is also charged with ensuring the meaningful participation in the adult-use marijuana industry by communities disproportionately harmed by the enforcement of previous marijuana laws,[4] and companies owned and operated by people of color,[5] women,[6] veterans,[7] farmers,[8] and small businesses.[9] If there is evidence of discrimination or barriers to entry, the

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[1] **Host Community Agreement - Cannabis Control Commission Massachusetts (masscannabiscontrol.com); Microsoft Word - Community-Outreach-Public-Notice-Template.docx (masscannabiscontrol.com).**
[2] **Community Outreach Meeting - Cannabis Control Commission Massachusetts (masscannabiscontrol.com); Microsoft Word - Community-Outreach-Public-Notice-Template.docx (masscannabiscontrol.com); 04.09.20_Form_COM_Attestation.pdf (masscannabiscontrol.com).**
[3] **Roles and Responsibilities - Cannabis Control Commission Massachusetts (masscannabiscontrol.com).**
[4] G. L. c. 94G, § 4 (a ½) (iv).
[5] St. 2017, c. 55, § 77.
[6] Id.
[7] Id.
[8] Id.
[9] G. L. c. 94G, § 4 (a ½) (xxvii).

Legislature directs the Commission to take action to address it.[10] Broadly, the Commission refers to these statutory mandates as its efforts to create an equitable adult-use cannabis industry in Massachusetts. It is also part of the Commission's stated mission.[11] Collaboration with municipal governments continues to be critical to the Commission's ability to fulfill its mission, including the elimination of barriers to entry.

Based on these statutory mandates, this guidance is targeted to municipalities working cooperatively with applicants navigating the municipal approval processes. The Commission provides guidance on the municipal process of negotiating and executing an HCA with a potential applicant and also on the remaining municipal processes. This document supplements the Commission's existing Guidance for Municipalities which is available at https://masscannabiscontrol.com/wp-content/uploads/2021/11/Guidance-for-Municipalities.pdf.

Please note that this guidance is not legal advice. If municipalities have legal questions regarding marijuana laws in the Commonwealth, they are encouraged to consult their counsel and other state officials and agencies. Municipalities should also note that this guidance is subject to change if the Legislature amends the adult-use cannabis statute, G. L. c. 94G, or the medical-use statute, G. L. c. 94I.

II. Start Local, Think Equitable

A municipality can initially consider its options for how the proposed businesses and this emerging industry fits into their long-term municipal planning processes and the contours of the community. It is a common misconception that communities must act quickly and comprehensively to determine the future of medical and adult-use sales in their communities. As noted above, under the "Local Control" provisions of G. L. c. 94G, § 3, municipalities have the authority to select the individuals and entities, to negotiate and enter into an HCA with these selected individuals and entities, and to regulate other aspects of the operation of MEs within their borders, for example, through zoning regulations.[12] Thus, to operate in the community, an applicant seeking Commission licensure as an ME or MTC will first

[10] St. 2017, c. 55, § 77 (c) (providing that "[i]f, upon completion of the study, the commission determines that there is evidence of discrimination or barriers to entry in the regulated marijuana industry, the commission shall adopt diversity licensing goals that provide meaningful participation of communities disproportionately affected by cannabis prohibition and enforcement, including minority business enterprises, women business enterprises and veteran business enterprises").
[11] **About - Cannabis Control Commission Massachusetts (masscannabiscontrol.com)**.
[12] Municipalities have the authority to adopt ordinances that impose reasonable safeguards on the operation of MEs, provided that they are not "unreasonably impracticable" and do not conflict with state law or regulations. G. L. c. 94G § 3 (a). "Unreasonably impracticable" means that the local laws cannot "subject licensees to unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a marijuana establishment." G. L. c. 94G § 1.

need to demonstrate that it has satisfied the statutory requirements at the local level,[13] including having executed an HCA and obtained other municipal approvals.

For all applicants, municipalities are encouraged to develop a process that is fair and transparent. While each municipality is different, an overall approach that can be used may include the following questions, which consider the community's needs and the Legislature's licensing requirements and equity goals. Some initial questions may include:

- Which municipal officials and representatives will be involved?
- What municipal processes will prospective licensees need to follow, and what is the timeline for these processes?
- How should prospective MTC and ME applicants be selected in order to move forward in the municipal HCA process?
- How should ME and MTC license types be zoned?
- How significant is the risk of diversion and should it be a major consideration in setting time, place and manner restrictions for adult-use businesses?
- Should municipalities modify buffer zones?
- Should municipalities restrict adult-use license types? Are caps on licenses necessary?
- Where can municipalities seek support?

Which municipal officials and representatives will be involved?

Early in their process, every municipality should consider the municipal approval process under G. L. c. 94G, § 3 that is relevant to them and identify the officials and representatives who may be involved in supporting these processes.

For example, before negotiating the HCA discussed under Section 3 (d), a municipality could consider forming a subcommittee to establish the process and criteria for selecting prospective marijuana businesses and to advise the municipal officials responsible for negotiating HCAs. Relatedly, the municipality should identify the municipal official with authority to execute the HCA. In some cases, a municipality's charter may restrict the municipal officials that have authority to contract.

Beyond the HCA process, municipal officials and representatives may be asked to provide other approvals, which could involve interpreting, implementing, or amending its bylaws and ordinances. For example, prospective business owners may seek approvals for zoning or building.

[13] G. L. c. 94G, § 5.

Municipalities are encouraged to seek the advice of their counsel,[14] engage special or outside counsel, and as appropriate, consult with state agencies[15] or independent associations with expertise in these areas. There may be associated legal obligations, for e.g., state procurement laws, which are beyond the scope of this guidance.

What municipal processes will prospective licensees need to follow, and what is the timeline for these processes?

To ensure fairness, transparency, and equity, it is important that municipalities establish objective selection processes and criteria, and a clear timeline for prospective marijuana businesses. For example, prospective marijuana business owners should have a certain period to demonstrate intent to apply; to meet with municipal officials and hold community outreach meetings; to address concerns with municipal officials; and to obtain the HCA and other municipal approvals – based on objective criteria and fair, equitable, and transparent review and selection processes. The timeline should clearly identify deadlines for both municipal officials and applicants.

To make the local control process more accessible, the Commission recommends utilizing local media, social media, and partnerships with community organizations to disseminate the information as broadly as possible. Local forums with question-and-answer sessions allow municipalities to announce the process as well as interact with prospective licensees and anticipate their questions. Municipalities should also be aware that there may be public records requests for records relating to its approval processes.[16]

How should prospective MTC and ME applicants be selected to move forward in the municipal HCA process?

Municipalities should select prospective marijuana businesses through a fair, transparent and equitable HCA selection process. This section identifies important considerations in that selection process.

Municipalities should be aware of the importance of the municipal HCA approval process to the prospective marijuana business owner. To be licensed, an applicant will need to demonstrate to the Commission that it has executed an HCA with the host community for each application submitted for a MTC or ME license. Municipalities are required to execute an HCA for each medical-use MTC license

[14] This could include Town Counsel (and Assistant, Associate or Deputy Town Counsel) or the Town Attorney; City Solicitor (and Assistant, Associate or Deputy City Solicitor); or Corporation Counsel (and Assistant, Associate or Deputy Corporation Counsel).
[15] Municipalities interested in the Office of the Attorney General's approval process for by-laws, including prior decisions, should consult Municipal Law Unit's website at **Municipal Law Review | Mass.gov**.
[16] **Public Records Division (state.ma.us)**.

application and adult-use ME license application it receives.

Under G. L. c. 94G, § 3 (d), municipalities and applicants must negotiate an HCA with the municipality in which they seek to operate which sets forth "the conditions to have a [Marijuana Establishment] located within the host community" and "stipulations of responsibilities between the host community and the [Marijuana Establishment]," and allows for an optional "community impact fee."[17] Before the Commission can approve a provisional license for an entity to operate as an ME or MTC, the applicant and municipality must execute an HCA and the municipality must submit a certification of this agreement to the Commission.[18]

As discussed above, the municipality can select the prospective marijuana business owners with which it will negotiate an HCA. Thus, the parties to the HCA are the ME or MTC applicant's owners or authorized representatives and the municipal officials with contracting authority. The municipality can designate the municipal official(s) or authorized representative(s), including its counsel, to negotiate and execute this agreement on its behalf. As with any agreement, the municipality has obligations under federal and state law above and beyond G. L. c. 94G, § 3, which requires it to act reasonably in negotiating essential terms. Municipalities should also be aware that the negotiation of HCAs have been and may be subject to scrutiny by federal and state agencies.[19]

In addition to establishing a fair and transparent process, municipalities have an interest in providing equitable access to applicants and in reducing barriers to entry. First, municipalities have an early and essential role in fulfilling the Legislature's equity mandates. A municipality's processes and criteria can determine whether Social Equity Applicants can successfully navigate the municipal approval processes, including the HCA process. Second, municipalities that support Social Equity Applicants have the potential to realize economic advantages in the form of revenue from exercising the local tax option. Third, municipalities that offer equitable processes may encourage Social Equity Applicants to seek economic opportunities within their borders, rather than in surrounding communities.

It is important for municipalities to understand some brief background on Massachusetts' equity mandates established by the Legislature. Under its enabling legislation, the Commission is required to prioritize applicants that will benefit communities disproportionately impacted by the enforcement of

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[17] G. L. c. 94G, § 3 (d).

[18] 935 Code Mass. Regs. § 500.101(1)(a)8; 935 Code Mass. Regs. § 501.101(1)(a)8.

[19] In addition to consulting with their own counsel. there are state resources that municipal officials and members of the public can consult to ensure that HCAs are compliant with relevant state laws. The Office of the Inspector General (OIG) can advise municipalities on whether the terms and conditions of an HCA implicate state procurement laws. **https://www.mass.gov/orgs/office-of-the-inspector-** general. The Department of Revenue (DOR) provides guidance for municipalities as to the local tax option. **https://www.mass.gov/marijuana-retail-taxes**.

prior laws prohibiting marijuana sales and distribution. This includes "prioritiz[ing] review and licensing decisions for applicants . . . who . . . demonstrate experience in or business practices that promote economic empowerment in communities disproportionately impacted by high rates of arrest and incarceration for offenses under [the Commonwealth's controlled substances act, G. L. c. 94C]." St. 2017, c. 55, § 56 (a) (ii). See 935 Code Mass. Regs. § 500.102(2)(a). In addition, the Commission must adopt "procedures and policies to promote and encourage full participation in the regulated marijuana industry by people from communities that have previously been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities." G. L. c. 94G, § 4 (a ½) (iv). To address these equity mandates, the Commission has identified Disproportionately Impacted Areas.[20] Related to these equity mandates, the Legislature requires the promotion of "businesses of all sizes." G. L. c. 94G, § 4 (a ½) (xxvii).

In considering this statutory scheme, the Commonwealth of Massachusetts Supreme Judicial Court has observed that the Legislature's equity goals have not been realized. Given the local control provisions in G. L. c. 94G, § 3 (d), municipalities can act as the de facto gatekeepers to Certified Economic Empowerment Priority Applicants and Social Equity Program Participant Applicants obtaining a license and entering this emerging industry.[21] If, say, a municipality establishes selection criteria that favor certain applicants over a Certified Economic Empowerment Priority Applicant or Social Equity Program Participant Applicant, they reduce the chances that these applicants can successfully navigate the municipal HCA process. If an applicant is unable to demonstrate that they have executed an HCA with a municipality, the Commission cannot complete its review and issue a provisional license. For these reasons, the municipality has an early and essential role in ensuring that applicants have access to this emerging industry.

To help eliminate barriers to entry, the Commission has identified some ways in which some traditional selection criteria may place Social Equity Applicants at a competitive disadvantage.

- Municipalities are encouraged to consider whether to favor applicants who have experience in the cannabis industry of a particular type or duration and whether to credit other types of non-traditional training and experience that may be instrumental to running a cannabis business.
- When reviewing financial records, business plans, and other documentation, municipalities should examine whether applicants can demonstrate sufficient sources of capitalization, not just traditional sources of capitalization.

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[20] **200825_Guidance_for_Identifying_Areas_of_Disproportionate_Impact.pdf (mass-cannabis-control.com)**.

[21] Mederi, Inc. v. City of Salem & another, 488 Mass. 60, 72 (2021) ("The regulations call for economic empowerment priority applicants to receive "[p]riority application review" by the commission. 935 Code Mass. Regs. § 500.102(2)(a). However, because municipalities, as the de facto gatekeepers to such priority application review, are not required to consider whether any entity seeking to enter into an HCA is an economic empowerment priority applicant, such applicants may receive no commission review at all").

- Municipalities may erroneously assume that Social Equity Applicants may not generate as must tax revenue as other applicants, when these applicants have exclusive access to certain license types that can generate revenue if the municipality exercises the local tax option. This is explained in further detail below.
- Municipalities that select potential applicants with which to negotiate an HCA based on their ability to make additional financial contributions, above and beyond the optional community impact fees, may be forfeiting revenues generated by the local tax option.
- Municipalities that may be concerned about entering into an HCA agreement with an individual who has a prior criminal record should be aware that the Commission conducts a suitability review of all applicants prior to considering their application for licensure.[22] Regardless of whether an individual or entity has executed an HCA with a municipality, the Commission will not issue a license if the applicant is unsuitable.

Municipalities should also consider that there are economic advantages to negotiating and executing HCAs with Social Equity Applicants. The Commission has granted Social Equity Applicants exclusive access to certain license types, including the Marijuana Delivery Operator, Marijuana Courier, and Social Consumption licensees for a period of time.[23] If a municipality negotiates with a Marijuana Delivery Operator to pay a community impact fee and exercises the optional local tax, retail sales by this licensee will provide additional sources of revenue as compared to other applicants. If a municipality allows a Marijuana Courier to make deliveries within its borders[24], Marijuana Couriers can deliver on behalf of brick-and-mortar Marijuana Retailers, and the Marijuana Retailers will pay community impact fees and collect the local tax option for their host communities.

In addition to prioritizing Certified Economic Empowerment Priority Applicants, the Legislature authorizes the Commission to take further action if after further study, there is evidence of discrimination or barriers to entry.[25] Chapter 55 of the Acts of 2017 aims for "meaningful participation of communities disproportionately affected by cannabis prohibition and enforcement, including minority business enterprises, women business enterprises and veteran business enterprises." [26]

Lastly, municipalities interested in these equity mandates are encouraged to reach out to their

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[22] Suitability standards are established in the Commission's regulations for both MEs and MTCs. 935 Code Mass. Regs. § 500.800 and § 501.800. If an applicant does not have certain disqualifying convictions under the statute, they can still demonstrate their suitability for licensure.
[23] 935 Code. Mass. Regs. § 500.050(6), (10) and (11).
[24] 935 Code. Mass. Regs. § 500.145(1)(l).
[25] St. 2017, c. 55, § 77 (c) ("If, upon completion of the study, the commission determines that there is evidence of discrimination or barriers to entry in the regulated marijuana industry, the commission shall adopt diversity licensing goals that provide meaningful participation of communities disproportionately affected by cannabis prohibition and enforcement, including minority business enterprises, women business enterprises and veteran business enterprises").
[26] Id.

legislators. Under G. L. c. 94G, § 3, a municipality can require an ME or MTC to negotiate and execute an HCA prior to operating within its borders. The Commission has recommended that the Legislature change the law to allow municipalities to opt out of these agreements or to limit the fees that could be charged beyond the community impact fee.[27] Municipalities can consider supporting the Commission's recommendation.

HCAs must include basic terms and conditions.

As noted above, a municipality must act reasonably in negotiating essential terms with the ME or MTC that seeks to operate within its community.

> "A [ME or MTC] seeking to operate or continue to operate in a municipality which permits such operation shall execute an agreement with the host community setting forth the conditions to have a [ME or MTC] located within the host community which shall include, but not be limited to, all stipulations of responsibilities between the host community and the [ME or MTC]. An agreement between a [ME or MTC] and a host community may include a community impact fee for the host community; provided, however, that the community impact fee *shall be reasonably related to the costs imposed upon the municipality by the operation of the [ME or MTC] and shall not amount to more than 3 percent of the gross sales of the [ME or MTC] or be effective for longer than 5 years.* Any cost to a city or town imposed by the operation of a [ME or MTC] shall be documented and considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4."

G. L. c. 94G, § 3 (d) (emphasis added).

The only requirements of an HCA are that it identifies "the conditions to have a [ME or MTC] located within the host community" and includes "all stipulations of responsibilities between the host community and the [ME or MTC]." G. L. c. 94G, § 3 (d). A municipality and applicant can agree on additional terms and conditions that may vary widely. The following is nor exhaustive nor exclusive, but can rather reflect potential provisions of an HCA:

- [Municipality] agrees to submit to the Commission, or other such licensing authority as required by law or regulation, certification of compliance with applicable local ordinances and bylaws relating to the [ME's or MTC's] application for licensure and/or operation where such compliance has been properly met, but makes no representation or promise that it will act on any other license or permit request including, but not limited, to any permit applications submitted by the [ME or MTC] in any particular way other than in accordance with the municipality's governing laws.

[27] https://masscannabiscontrol.com/wp-content/uploads/2019/03/HCA-Report-FINAL_March2019_v2-1.pdf

- As discussed in further detail below, a municipality can require the licensee to pay a community impact fee and can exercise the optional local tax but is not required to do so. The following provisions reflect the available alternatives.
    - No fees
        - The municipality shall not require the licensee to pay a community impact fee of 3%, nor any other fees or other financial contributions.
    - The community impact fee and no other fees
        - The licensee shall pay a community impact fee of 3% in anticipation that the municipality will provide the following [service(s)] to the [ME or MTC], and not require any other fees other financial contributions.
    - The community impact fee and additional fees
        - The licensee shall pay a community impact fee of 3% and [other fee] in anticipation that the municipality will provide the following [service(s)] to the [ME or MTC], and not require any other fees or financial contributions.
    - The municipality [shall/shall not] exercise the optional local tax
        - The municipality recognizes that the Commission requires that on renewal, an [ME or MTC] shall submit as a component of the renewal application documentation that the establishment requested from its Host Community the records of any cost to a city or town reasonably related to the operation of the establishment, which would include the city's or town's anticipated and actual expenses resulting from the operation of the establishment in its community. [935 Code Mass. Regs. §§ 500.103(4)(f) or 501.103(4)(f)]. It also recognizes that under G. L. c. 94G, § 3 (d), any cost to a city or town imposed by the operation of a [ME or MTC] shall be documented and considered a public record as defined by G. L. c. 4, § 7, cl. 26. Consistent with these legal requirements, the municipality shall provide the licensee, on request, records demonstrating that the community impact fee is reasonably related to the costs imposed upon the municipality by the operation of the [ME or MTC] as required under [935 Code Mass. Regs. §§ 500.103(4)(f) or 501.103(4)(f)].
- On renewal, the municipality or [ME or MTC] may seek to renegotiate the community impact fee if it has a reasonable basis that it is not reasonable related to the costs imposed upon the municipality by the operation of the [ME or MTC] as required by G. L. c. 94G, § 3 (d). If the parties are unable to renegotiate the fee, they will submit to [a binding arbitration] with the costs being shared by the parties.
- The [ME or MTC] agrees that jobs created at the licensed premises will be made available to [Municipality] residents. [Municipality] residency will be one of several factors considered in hiring decisions at the facility but shall not be determinative and shall not prevent the [ME or

MTC] from hiring the most qualified candidates and otherwise complying with all Massachusetts anti-discrimination and employment laws.

- The [ME or MTC] agrees to provide a paid police detail for the purposes of traffic and crowd management during peak hours of operation, which shall include, but may not be limited to, Fridays between []:00 pm – []:00 pm; Saturdays, Sundays, and state holidays.
- To the extent that curbside delivery is allowed and approved by the municipality and the Commission, the [ME or MTC] agrees to comply with all local and state requirements.
- A key-and-lock system shall not be the sole means of controlling access to the licensed premises of the [ME or MTC]. The [ME or MTC] agrees to implement a method such as a keypad, electronic access card, or other similar method for controlling access to areas in which Marijuana or Marijuana Products are kept in compliance with [935 Code Mass. Regs. § 500.000 and 501.000].
- In the case that the [ME or MTC] desires to relocate within [Municipality], it must first obtain approval of the new location before any relocation of the facility and comply with any requirements of the Commission for change of location.
- Termination of the HCA: The [ME or MTC] may terminate this agreement [] ([]) days after the cessation of operations of any facility within [Municipality]. The [ME or MTC] shall provide notice to [Municipality] that it is ceasing to operate within the [Municipality] and/or is relocating to another facility outside the [Municipality] at least [] ([]) days prior to the cessation or relocation of operations. If the [ME or MTC] terminates this agreement, the final annual payment as defined in paragraph [] of this agreement shall be paid to the [Municipality] by the [ME or MTC]. The [ME or MTC] shall pay the final annual payment to [Municipality] within [] ([]) days following the date of termination.
- The [Municipality] and [Applicant] agree to work together in support of the [Applicant]'s Diversity Plan and Plan to Positively Impact Disproportionately Harmed People. Additionally, the parties agree to share data biannually on the progress or success of the stated plans.
- [ME or MTC] agrees to work collaboratively with the [Municipality] and provide staff to participate in a reasonable number of municipal-sponsored educational programs on public health and drug abuse prevention geared toward public health and public safety personnel.

The municipality may exercise a local tax option for adult-use sales of Marijuana and Marijuana Products.

Under G. L. c. 64H and 64N, the Legislature explicitly authorized municipalities to adopt an optional local tax option of up to 3% as applied to retail transactions for adult-use sales of Marijuana or Marijuana Products, in addition to state sales and excise taxes.[28] In so doing, the Legislature established the range of state-authorized taxes that may be assessed on MEs (not MTCs):

[28] G. L. c. 64H, § 2 and G. L. c. 64N, §§ 2 and 3 (a); 830 Code Mass. Regs. § 64N.1.1: *Marijuana Retail Taxes.*

- the 6.25% sales tax;
- the 10.75% excise tax on Marijuana and Marijuana Products; and
- an optional local tax option of up to 3%, which may be applied to retail sales only.

Information about the revenue collected from these taxes is available in the Department of Revenue's **Blue Book Reports.**

In Massachusetts, the Legislature is tasked with earmarking a portion of tax revenue for restorative justice, jail diversion, workforce development, industry specific technical assistance, and mentoring services. If a municipality, through a vote of its legislative body, adopts the local tax option on adult-use retail sales, it can further the Commission's equity and related mandates by designating part of the tax contributions to local programing.

Municipalities should note that retail sales by MEs on other products like marijuana accessories, marijuana branded goods, or hemp or hemp products, may be subject to the state sales tax and may be assessed for other taxes if not separately identified on the sales receipt provided to the customer. Additionally, while retail sales by MTCs are not subject to these taxes, marijuana accessories or marijuana branded goods may be subject to the state sales tax.

More information on the tax implications for ME operations is available from DOR at **https://www.mass.gov/marijuana-retail-taxes**.

The municipality may exercise an option to collect a community impact fee of up to 3% of gross sales under § 3 (d) and include the fee as a condition in the HCA.

An HCA may also "include a community impact fee for the host community." The community impact fee, however, is not mandatory.[29] In its review of an application for provisional licensure, the Commission only seeks a demonstration that the municipality and an applicant have entered into an HCA, it does not look at whether the agreement included certain terms, including the community impact fee.

The community impact fee must be structured appropriately and consistently with G. L. c. 94G, § 3 (d) and the decisional law on fees. While § 3 (d) does not include a definition of what constitutes a "community impact fee" and does not provide for elements of the fee, it does impose the following limitations on any community impact fee included as part of an HCA:

1. The fee must not amount to more than 3% of the gross annual sales of the ME or MTC.

[29] Mederi, Inc. v. City of Salem & another, 488 Mass. 60, 74 (2021) (recognizing that the statutory provisions and regulations are silent with respect to whether municipalities may mandate such payments; viable arguments may be made on both sides of the issue).

2. It must be "reasonably related to the costs imposed upon the municipality by the operation of the [ME or MTC]."
3. It must be limited to a term of 5 years.

What are the legal requirements?

In addition to these basic statutory requirements, the community impact fee—whether characterized as a fee, donation, or other exaction, including any assessment up to 3% of gross annual sales—must comply with these legal requirements.

- The fee must be negotiated and agreed to voluntarily
    - An "agreement," i.e., a "manifestation of mutual assent by two or more [parties]," see Black's Law Dictionary 84 (11th ed. 2019), requires each party to opt in, which includes the need for and amount of the fee. Thus, the municipality has discretion to negotiate a fee of up to 3% and can forgo the fee entirely.[30]
- The community impact fee cannot exceed 3%.
    - The Commission emphasizes that the municipality is strictly limited to the amount it can collect as part of the community impact fee, which is capped at 3% of the ME's or MTC's gross annual sales. Thus, any fee that is more than 3% of gross annual sales is not a valid community impact fee.
- The fee must be specifically related to the MTC or ME and not other members of the public
    - The fee must be charged in exchange for a good or service which benefits the ME or MTC paying the fee in a manner not shared by other members of the public.
- All fees—including the community impact fee—shall be "reasonably related" to the specific licensee that is paying the fee and should not be a revenue generator or a fixed source of revenue in a municipality's budget
    - Under G. L. c. 94G, § 3 (d), an agreement between a [ME or MTC] and a host community may include a community impact fee for the host community; provided, however, that the community impact fee shall be reasonably related to the actual and anticipated costs imposed upon the municipality by the operation of the [ME or MTC].
    - It is important that all fees bear some reasonable relation to the costs of providing municipal goods or services or other benefits to the ME or MTC and not merely be a fee without a sufficient reason or relationship to the licensee's operations.
    - Municipalities are encouraged to develop a fair, transparent, and equitable process for the requirement that an applicant pay a fee and its relationship to the municipality's anticipated and/or actual costs.
    - Municipalities should be aware that under G. L. c. 94G, § 3 (d), any cost to a city or town imposed by the operation of a [ME or MTC] shall be documented and considered a

[30] See G. L. c. 64H, § 2 and G. L. c. 64N, §§ 2 and 3 (a); 830 Code Mass. Regs. § 64N.1.1: Marijuana Retail Taxes.

public record as defined by G. L. c. 4, § 7, cl. 26. The Commission requires that on renewal, an [ME or MTC] shall submit as a component of the renewal application documentation that the establishment requested from its Host Community the records of any cost to a city or town reasonably related to the operation of the establishment, which would include the city's or town's anticipated and actual expenses resulting from the operation of the establishment in its community. See 935 Code Mass. Regs. §§ 500.103(4)(f) or 501.103(4)(f). Thus, the Commission respectfully asks municipalities to provide the licensee with records demonstrating that the community impact fee is reasonably related to the costs imposed upon the municipality by the operation of the ME or MTC.

- On renewal, the municipality or [ME or MTC] may seek to renegotiate the community impact fee if it has a reasonable basis that it is not reasonable related to the costs imposed upon the municipality by the operation of the [ME or MTC] as required by G. L. c. 94G, § 3 (d). Municipalities should consider if the parties cannot renegotiate the fee, whether they will submit to binding arbitration or some other form of alternative dispute resolution with the costs being shared by the parties.
- When negotiating with MEs or MTCs, municipalities are cautioned against relying on fees that are potential revenue generators and planning their municipal budgets around the assumption that these fees will generate a fixed amount of revenue.
- Parties may consider negotiating a fee with a shorter duration. This may be particularly helpful to reaching an agreement where the parties have difficulty anticipating costs and wish to revisit the community impact fee once more information relevant to the particular ME or MTC is available.

- The community impact fee is limited to a five-year term
  - The Commission reads the provision that provides "the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the [ME or MTC] and shall not…be effective for longer than 5 years," as strictly limiting the HCA to a term of 5 years or less.
- The community impact fee may need to be renegotiated after renewal.
  - Municipalities are encouraged to develop a process for monitoring the fee and the actual costs.
  - As discussed in further detail below, when an ME or MTC renews its license, it is obligated to ask the municipality for information relating to the actual impact of the business on the community.[31]

[31] 935 Code Mass. Regs. § 500.103(4)(f); 935 Code Mass. Regs. § 501.103(4)(f).

- The municipality and ME or MTC are encouraged to renegotiate and amend the HCA so that the terms are related to the actual costs incurred by the operation of the ME or MTC and to avoid legal disputes regarding the validity of these fees.

What is permissible as a community impact fee?

Some anticipated costs that may reasonably be related to an ME's or MTC's operations include:

- Traffic control design studies where additional traffic is anticipated because of the location of a retail or social consumption establishment or the ability to purchase product curbside;
- Municipal permitting and inspection costs;
- Environmental impact or stormwater or wastewater studies anticipated as the result of cultivation;
- Public safety personnel overtime costs during times where higher congestion or crowds are anticipated; and
- Additional substance abuse prevention programming.

This list is illustrative, not exhaustive nor exclusive.

The municipality may exercise its option to collect fees beyond the community impact fee of up to 3% under § 3 (d) and include the fee as a condition in the HCA.

Because G. L. c. 94G, § 3 (d) does not explicitly preclude fees above and beyond the community impact fee, the Commission has sought clarity from the Legislature as to whether municipalities can exact additional fees.[32] Importantly, the imposition of additional fees makes it difficult for certain applicants, including Social Equity Applicants, and businesses of all sizes to operate within a host community.

As discussed in detail above, a municipality seeking to impose a fee, donation, gift, or other exaction, including any assessment above the 3% community impact fee, must also comply with the applicable legal requirements for regulatory fees, which are described above and noted below:

- The fee must be negotiated and agreed to voluntarily;
- The fee must be specific to a municipal service related to the MTC or ME and not other members of the public;
- All fees—including the community impact fee—shall be "reasonably related" to the specific licensee that is paying the fee and should not be a revenue generator or a fixed source of revenue in a municipality's budget; and
- The fee may need to be renegotiated after renewal.

[32] https://masscannabiscontrol.com/wp-content/uploads/2019/03/HCA-Report-FINAL_March2019_v2-1.pdf

Before the Commission considers a provisional license application, the licensing staff verifies that a municipality and applicant entered into an HCA and the applicant's compliance with municipal requirements.

As part of the provisional licensure application, the Commission requires that the applicant provide an "HCA Certification" in order for the application to be considered complete.[33] Once the applicant has submitted a complete application, the Commission's licensing staff provides the municipality with a copy of the application and asks the municipality to verify the applicant's compliance with local ordinances and bylaws.[34] At no time, however, is the applicant required to provide the HCA itself to the Commission, nor does the Commission undertake any review of the contents of the HCA.

Municipalities are encouraged to consider equity in negotiating HCAs and seeking fees

Municipalities negotiating with Social Equity Applicants should consider whether fees and other requirements will make it difficult for the business to succeed. This includes the consideration of whether it is necessary to impose community impact fees, to make further financial requirements, or to exercising the local tax option.

After the first annual renewal, the municipality and licensed ME or MTC are encouraged to renegotiate the community impact (and other) fees.

As noted above, the statute and regulations require that, at renewal, the ME or MTC ask the municipality for information on the actual costs imposed by the operation of ME or MTCs.[35] To the

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[33] 935 Code Mass. Regs. § 500.101(1)(a)8.; 935 Code Mass. Regs. § 501.101(1)(a)8. See **https://mass-cannabis-control.com/wp-content/uploads/2018/04/04.09.20_Form_HCA_Cert.pdf**.

[34] G. L. c. 94G, § 5 (b) (2) (providing that "[t]he commission shall approve a marijuana establishment license application and issue a license if . . . the commission is not notified by the city or town in which the proposed marijuana establishment will be located that the proposed marijuana establishment is not in compliance with an ordinance or by-law consistent with section 3 of this chapter and in effect at the time of application"); 935 Code Mass. Regs. § 500.102(1)(d); 935 Code Mass. Regs. § 501.102(1)(d).

[35] Both G. L. c. 94G, § 3 (d) and the Commission's regulations anticipate the collection and publication of additional information on the costs imposed by the operation of an ME or MTC in a host community. G. L. c. 94G, § 3 (d) (providing, in relevant part, "[a]ny cost to a city or town imposed by the operation of an [ME or MTC] shall be documented and considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4"). The relevant regulations provide:

> "A [ME or MTC] shall submit as a component of the renewal application documentation that the establishment requested from its Host Community the records of any cost to a city or town reasonably related to the operation of the establishment, which would include the city's or town's anticipated and actual expenses resulting from the operation of the establishment in its community. The applicant shall provide a copy of the electronic or written request, which should include the date of the request, and either the substantive response(s) received or an attestation that no response was received from the city or town. The request should state that, in accordance with M.G. L. c. 94G, § 3(d), any cost to a city or town imposed by the operation of a [ME or MTC] shall be documented and considered a public record as defined by M.G. L. c. 4, § 7, cl. 26."

935 Code Mass. Regs. § 500.103(4)f; 935 Code Mass. Regs. § 501.103(4)f. Thus, a renewal applicant must seek documentation of the cost imposed by its operations in the host community.

extent that there are discrepancies between the fees charged and the costs imposed by the ME or MTC's operations, the parties are encouraged to renegotiate the HCA. Agreeing on the fees that are reasonably related to the actual costs incurred by the operation of the ME or MTC will allow the parties to avoid legal disputes regarding the validity of these fees. At, or before, the conclusion of the term of the preceding community impact fee, the parties may choose to negotiate a new, optional community impact fee which shall similarly be limited to a term of five years or less.

Regardless of whether the parties choose to renegotiate fees, the Commission interprets the strict time limitation of § 3 (d) as extinguishing the preceding community impact fee upon the expiration of five years or less, whichever was originally agreed to by the parties.

III. Beyond HCAs, Municipal Limits on MEs and MTCs

In addition to HCAs, municipalities may need to consider factors such as zoning, buffer zones, license types, and license caps. Municipalities have the authority to adopt ordinances and bylaws that impose reasonable safeguards on the operation of licensees, provided that they are not "unreasonably impracticable" and are not in conflict with state law or regulations.[36] "Unreasonably impracticable" means that the local laws cannot "subject licensees to unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a [ME] or [MTC]."[37] Because applicable laws may vary, these will be considered on an individual basis.

How should each license type be zoned?

The law allows, but does not mandate, municipalities to pass ordinances and bylaws governing the "time, place, and manner" of MEs as well as businesses dealing with cannabis accessories, presumably MTCs.[38] Additional municipal action is not, however, a requirement. For example, a municipality could determine that a proposed marijuana-business use falls under a use authorized by its existing bylaws or ordinances, instead of passing a new law. Given the Commission's lack of jurisdiction over municipal zoning and expertise in this area, municipalities are encouraged to consult with counsel.

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[36] G. L. c. 94G § 3 (a).
[37] G. L. c. 94G § 1.
[38] G. L. c. 94G, § 3 (a) (1) (providing that [a] A city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana . . . [1] govern the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories, except that zoning ordinances or by-laws shall not operate to: [i] prevent the conversion of a medical marijuana treatment center licensed or registered not later than July 1, 2017 engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment engaged in the same type of activity under this chapter; or [ii] limit the number of marijuana establishments below the limits established pursuant to clause [2]").

While this is an emerging industry, a municipality may find that a marijuana business's operations fall within a use already authorize by its existing bylaws and ordinances, for e.g., agricultural, industrial, or manufacturing. A municipal official could seek legal advice on whether a proposed business is authorized by its bylaws or ordinances and whether there would need to amend these existing laws.[39]

There may be some unintending consequences of municipal zoning decisions.

- When municipalities impose overly strict zoning restrictions and large buffer zones, they can limit the number of parcels available to businesses of all sizes.[40] This can have the unintended impact of favoring some businesses and license types over others.
- Where there are restrictions on zoning, established businesses with substantial financial resources have advantages over less-resourced businesses to the extent that they can outbid competitors and overpay for a lease or purchase of property. Thus, Social Equity Applicants may be at a disadvantage in such communities. Based on Cannabis Advisory Board feedback and public comment, the Commission considers real estate to be a primary hurdle for businesses owned by Social Equity Applicants, and companies owned and operated by people of color, women, veterans, and farmers, and small businesses.
- Overly strict local zoning in other states has also led to complaints that businesses were crowded into small sections of a municipality, often areas with a vulnerable or low-income population. One study examined the location of medical marijuana dispensaries in Los Angeles and reported that dispensaries were located in primarily commercially zoned areas with greater road access, density of on- and off-premise alcohol outlets, and percentage of Hispanic residents.

Based on these considerations, the Commission recommends that municipalities do not impose overly restrictive zoning requirements and to zone cannabis businesses based on the nature of their primary operations. It may be most appropriate, for example, for Marijuana Cultivators, Microbusinesses, and Craft Marijuana Cooperatives to be zoned, as agricultural or manufacturing businesses, while Marijuana Retailers would be zoned in the same manner as any other retailer. Marijuana Product Manufacturers may be appropriate for multiple zones, depending upon whether they encompass small businesses or larger companies creating edibles in commercial kitchens. If a municipality has any concerns about new types of businesses coming to their city or town, the community outreach meeting that is required by the Commission for licensure gives residents and prospective applicants a chance to discuss their concerns and propose solutions for an HCA.

[39] See Valley Green Grow, Inc. & others v. Town of Charlton & others, 99 Mass. App. Ct. 670 (2021).
[40] G. L. c. 94G, § 4 (a ½) (xxvii).

How significant is the risk of diversion and should it be a major consideration in setting time, place, and manner restrictions on for adult-use cannabis businesses?

Per its statutory mandate, the Commission has prioritized the prevention of diversion of adult-use Marijuana and Marijuana Products to individuals under 21 years of age. Current studies do not show any evidence that presence of or proximity to medical marijuana dispensaries increases youth access and use of cannabis. Although there have been no definitive studies on the impact of adult-use cannabis businesses on youth access and use of cannabis, the Commission has acted to ensure that licensees understand and comply with the regulatory requirements aimed to prevent underage consumption. The Commission's medical regulations only allow patients and caregivers to access medical-use Marijuana and Marijuana Products. The adult-use regulations prevent diversion to individuals under 21 years of age with extensive regulatory requirements for positive identification checks[41] and inspectional protocols that include a spot check and a "secret shopper" program.[42] Both regulatory schemes also require licensees to comply with additional requirements for product safety and checking identifications.[43] The Commission's Responsible Vendor Training Program, required for all ME and MTC Agents, includes training on diversion practices, specifically the prevention of sales to minors, as regulated in both 935 CMR 500.105 (2)(b) and 935 CMR 501.105 (2)(b). In addition, the Commission launched a statewide campaign to educate the public about the responsible adult use of marijuana and the risks associated with consuming adult-use cannabis underage; preventing diversion is a critical part of this campaign.[44]

Current preliminary research suggests that regulated marijuana businesses are not associated with increased crime. One study found that the density of medical marijuana dispensaries was unrelated to property and violent crimes in local areas.[45] More broadly, an analysis of studies looking at the relationship between crime and cannabis use found an association in only four out of 10 studies.[46] That said, the Commission requires seed-to-sale tracking of all Marijuana and Marijuana Products offered for transfer or sale in Massachusetts. The agency also enforces stringent security protocols to ensure the safety and security of establishment staff, consumers, patients, caregivers and other members of the public located in close proximity to licensed businesses. Security provisions include requirements that licensees share safety plans with local law enforcement and emergency responders, maintain cameras and perimeter alarm systems, and establish incident reporting protocols.[47]

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[41] 935 Code Mass. Regs. § 500.140(2); 935 Code Mass. Regs. § 501.140(2).
[42] 935 Code Mass. Regs. § 500.303; 935 Code Mass. Regs. § 501.303.
[43] 935 Code Mass. Regs. § 500.105; 935 Code Mass. Regs. § 501.105.
[44] **https://moreaboutmj.org/**
[45] Freisthler et al., A micro-temporal geospatial analysis of medical marijuana dispensaries and crime in Long Beach California, Addiction, 2016.
[46] Bennett, T., Holloway K., & Farrington, D. (2008). The statistical association between drug misuse and crime: A meta-analysis. *Aggression and Violent Behavior*, 13, 107, 107-118.
[47] 935 Code. Mass. Regs. § 500.110; 935 Code Mass. Regs. § 501.110.

Should municipalities modify buffer zones?

State law establishes a 500-foot buffer around K-12 schools.[48] A municipality, however, may choose to reduce the size of that buffer.[49] For the reasons described above, the Commission suggests that additional buffer zones or separation requirements may not be necessary and cautions communities against acting arbitrarily. To determine how buffer zones are measured, municipalities are encouraged to consult the Commission's regulations.[50]

What adult-use license types should municipalities allow?

Under its adult-use cannabis program, the Commission created a wide variety of license types to encourage participation by businesses of all sizes, including Marijuana Cultivators, Marijuana Product Manufacturers, Marijuana Transporters, Marijuana Retailers, Marijuana Delivery Operators, Marijuana Couriers, Microbusinesses, Craft Marijuana Cooperatives, and Marijuana Research Facilities.[51] Independent Testing Laboratories test both medical- and adult-use marijuana.[52] More details about each license type can be found in the Commission's **Guidance on Licensure** available at https://masscannabiscontrol.com/document/guidance-on-licensure/.

The Legislature requires that a diversity of businesses be allowed to operate in this emerging industry in Massachusetts. Municipalities play a critical role in fulfilling this mandate:

- Municipalities that want to encourage Social Equity Applicants should consider prioritizing the review of these applicants over other applicants;
- Municipalities that want to encourage the development of small businesses may decide to consider what type of licenses they wish to allow within the community, such as Microbusinesses, Craft Marijuana Cooperatives, or Marijuana Delivery Operators or Marijuana Couriers;
- Agricultural communities should note that Microbusinesses and Cooperatives can create jobs for farmers and individuals with expertise in agriculture; and

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[48] Under G. L. c. 94G, § 5, there is a required buffer zone for MEs.

> "(b) The commission shall approve a marijuana establishment license application and issue a license if:
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> [….]
>
> "(3) the property where the proposed marijuana establishment is to be located, at the time the license application is received by the commission, is not located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a city or town adopts an ordinance or by-law that reduces the distance requirement."

[49] 935 Code Mass. Regs. § 500.110(3); 935 Code Mass. Regs. § 501.110(3).
[50] 935 Code Mass. Regs. § 500.110(3); 935 Code Mass. Regs. § 501.110(3).
[51] G. L. c. 94G, § 4; 935 Code Mass. Regs. § 500.050.
[52] G. L. c. 94G, § 15.

- When there is a change in the law, these municipalities should consider participating in the Commission's Social Consumption Pilot Program.

Municipalities do not face the same choice of license types when it comes to MTCs. Since MTCs are vertically integrated in Massachusetts, they engage in multiple licensed operations, including cultivation, manufacturing, transportation, retail, and delivery.[53]

Are limits, caps, or other restrictions on adult-use licensees necessary?

Massachusetts law imposes no statewide cap on the number of marijuana licenses that the Commission may issue. Instead, the Commission reviews each MTC or ME application and determines whether it complies with the medical or adult-use regulations, and whether the applicant is suitable for licensure.[54] Such an approach leaves room for businesses of all sizes,[55] rather than forcing qualified applicants to compete for a limited number of licenses – a process that tends to perpetuate existing inequities.

Municipalities may restrict certain licensed activities that are public nuisances, but not other types of license activity.[56] For example, a city or town cannot ban the transportation of Marijuana and Marijuana Products through its community, even if it places restrictions on delivery.[57]

Municipalities may ban[58] or limit[59] the number and type of adult-use MEs, but there is no requirement

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[53] G. L. c. 94I, § 2; 935 Code Mass. Regs. § 501.050.
[54] 935 Code Mass. Regs. §§ 500.101 and 500.800; 935 Code Mass. Regs. §§ 501.101 and 501.800.
[55] G. L. c. 94G, § 4 (a ½) (xxvii).
[56] Under the "Local Control" provisions of G. L. c. 94G, § 3, a city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter and that "restrict the licensed cultivation, processing and manufacturing of marijuana that is a public nuisance." G. L. c. 94G, § 3 (a) (3).
[57] Under the "Local Control" provisions of G. L. c. 94G, § 3, "[n]o city or town shall prohibit the transportation of marijuana or marijuana products or adopt an ordinance or by-law that makes the transportation of marijuana or marijuana products unreasonably impracticable." G. L. c. 94G, § 3 (c).
[58] Under G. L. c. 94G, § 3 (b), the city council of a city and the board of selectmen of a town shall, upon the filing with the city or town clerk of a petition meeting the following requirements:
"(i) signed by not fewer than 10 per cent of the number of voters of such city or town voting at the state election preceding the filing of the petition and

> "(ii) conforming to the provisions of the General Laws relating to initiative petitions at the municipal level, request that the question of whether to allow, in such city or town, the sale of marijuana and marijuana products for consumption on the premises where sold be submitted to the voters of such city or town at the next biennial state election.

"If a majority of the votes cast in the city or town are not in favor of allowing the consumption of marijuana or marijuana products on the premises where sold, such city or town shall be taken to have not authorized the consumption of marijuana and marijuana products on the premises where sold."
[59] Under G. L. c. 94G, § 3 (a) (1) and (2), a city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana, including

that communities take such action. This guidance is provided for municipalities that have opted not to impose a ban, including those that are engaged in planning and decision-making while a temporary moratorium is in place, or those considering rescinding a ban.

Limits on municipal authority to restrict delivery licensees and associated Marijuana Retailers engaging in home deliveries.

The Commission has established three delivery models, the Marijuana Courier, Marijuana Delivery Operator, and Microbusiness with Delivery Endorsement, in part, to promote and encourage the participation of Social Equity applicants in this emerging industry. Thus, municipalities should consider the economic impacts of such restrictions. As municipalities consider the operations of delivery licensees within their borders, they should also be aware that any by-laws and ordinances would need to satisfy the "Local Control" provisions of G. L. c. 94G, § 3, and the applicable decisional law.

By-laws and Ordinances

Generally, a municipality can adopt a by-law or ordinance imposing "reasonable safeguards,"[60] on licensing activities associated with delivery.[61] This can include restrictions on the time, place, and manner of operations within its borders.[62] However, the by-law or ordinance must not:

conflict with the Commission's laws, including the delivery regulations;[63]

"limit the number of marijuana establishments below the limits established pursuant to clause [2]."

and

"(2) limit the number of marijuana establishments in the city or town; provided, however, that in the case of a city or town in which the majority of voters voted in the affirmative for question 4 on the 2016 state election ballot, entitled "Legalization, Regulation, and Taxation of Marijuana", and after December 31, 2019 in the case of any other city or town, the city or town shall submit any by-law or ordinance for approval to the voters pursuant to the procedure in subsection (e) before adopting the by-law or ordinance if it would:

"(i) prohibit the operation of 1 or more types of marijuana establishments within the city or town;

"(ii) limit the number of marijuana retailers to fewer than 20 per cent of the number of licenses issued within the city or town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under section 15 of chapter 138; or

"(iii) limit the number of any type of marijuana establishment to fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the city or town."

[60] G. L. c. 94G, § 3 (a) ("A city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter and that: (1) govern the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories," subject to certain limitations").

[61] This section focuses on licensing activities associated with deliveries; other licensing activities that can be restricted by municipalities are set forth in G. L. c. 94G, § 3.

[62] G. L. c. 94G, § 3 (a) (1).

[63] These delivery regulations are included in 935 Code Mass. Regs. §§ 500.002, 500.050 (10)-(11), 500.145

qualify as unreasonable;[64] or

be "unreasonably impracticable"[65] which means: there is an "unreasonable risk", or there is a requirement of "such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a marijuana establishment."

Transportation

A municipality cannot prohibit the transportation of Marijuana and Marijuana Products through its community.[66] Thus, to the extent that a Delivery Licensee vehicle is engaged in transportation, the municipality cannot prohibit this activity. If it adopts a transportation-related by-law or ordinance, it cannot be "unreasonably impracticable" as defined above.

Municipalities should be aware that transportation and delivery are treated differently under the Commission's regulations.[67] Deliveries by a licensee are geographically limited to the following:

- The municipality identified as the Marijuana Establishment's place of business;
- Any municipality which allows for retail within its borders whether or not one is operational; or
- Any municipality which after receiving notice from the Commission, has notified the Commission that delivery may operate within its borders.

HCAs

Through the HCA process, a municipality can seek to impose conditions on a Delivery Licensee operating within its community but cannot not through such agreement set forth conditions on another establishment, e.g., a Marijuana Retailer.

Conversely, a municipality is cautioned against imposing conditions or requiring fees in its agreement with a Marijuana Retailer that impact the operations of a Marijuana Courier, unless there is also an HCA memorializing those conditions or fees with the Marijuana Courier.

That HCA can also include fees on a Marijuana Courier, Delivery Operator, or Microbusiness with Delivery Endorsement (hosted by that community) that relate to the operations of that licensee, so long as the following conditions have been met:

- The fee must be negotiated and agreed to voluntarily;
- The fee must be specific to a municipal service related to the MTC or ME and not to other members of the public;

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[64] A town must seek approval of any by-law from the Office of the Attorney General's Municipal Law Unit. **Municipal Law Review | Mass.gov**.
[65] G. L. c. 94G, § 1.
[66] G. L. c. 94G, § 3 (c).
[67] Cf. 935 Code Mass. Regs. § 500.145(1)(l).

- All fees—including the community impact fee—shall be "reasonably related" to the specific licensee that is paying the fee and should not be a revenue generator or a fixed source of revenue in a municipality's budget; and
- The fee may need to be renegotiated after renewal.

Municipalities can only impose conditions or require fees for Delivery Operators operating within their borders. Unless the Delivery Operator is hosted by the municipality, a municipality can not impose conditions or require fees from that licensee through an HCA.

IV. Seeking Counsel and Support

Municipalities, applicants for ME or MTC licensure, and licensees are encouraged to seek legal advice from a licensed attorney with respect to municipal processes and negotiations with applicants.

Other available resources:

- Municipalities can seek advice on state procurement laws by contacting the Office of the Inspector General (OIG)'s Chapter 30B Assistance Hotline at (617) 722-8838.
- Eligible applicants for licensure and licensees may qualify to receive services through the Commission's Social Equity Program. If you are a participant in the Social Equity Program or are interested in learning more about the services offered as part of the Social Equity Program, please contact the Commission at (774) 415-0200.
- Municipalities interested in the Office of the Attorney General's approval process for by-laws, including prior decisions, should consult Municipal Law Unit's website at Municipal Law Review | Mass.gov.
- Individuals concerned about fraud, waste, and abuse can contact the OIG's hotline at (800) 322-1323.

V. Questions

For more information and resources regarding equitable municipal policies, please visit our page on Municipal Equity. If you have additional questions on these policies and procedures or HCAs, please contact the Commission at Commission@CCCMass.com or (774) 415-0200