

Guidance on Host Community Agreements

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Massachusetts Cannabis Control Commission

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I. Purpose

This guidance document is being issued by the Cannabis Control Commission (“Commission”) to provide insight into regulations promulgated related to Chapter 180 of the Acts of 2022 (“Chapter 180”) and applicable law. The Commission seeks to support applicants, licensees, and municipalities in complying with its new regulations promulgated on October 27, 2023.

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

II. Introduction

Under G. L. c. 94G, § 4, and G. L. c. 94I, the Commission has the authority to regulate and has promulgated requirements governing the state licensure processes for the adult- and medical-use marijuana programs. In general, the Commission will not issue a license to an applicant unless (1) the applicant has submitted an application in compliance with Commission regulations¹ and (2) the Commission is not notified by the municipality that the proposed applicant is not in compliance with local ordinances or by-laws.² Additional parameters regarding licensure are listed within G.L. c. 94G, § 5 (b) (3) – (4).

Generally, a municipality can adopt a by-law or ordinance imposing “reasonable safeguards,” on licensing activities.³ This can include restrictions on the time, place, and manner of operations within its borders.⁴ However, the by-law or ordinance must not:

- conflict with the Commission’s laws, including the delivery regulations;⁵
- qualify as unreasonable;⁶ or

¹ G. L. c. 94G, § 5 (b) (1).

² G.L. c. 94G, § 5 (b) (2).

³ 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”).

⁴ G. L. c. 94G, § 3 (a) (1).

⁵ These delivery regulations are included in 935 Code Mass. Regs. §§ 500.002, 500.050 (10)-(11), 500.145 and 501.145.

⁶ 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.](#)



- be “unreasonably impracticable” 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.”⁷

Under the “Local Control” provisions of G. L. c. 94G, § 3, and subject to statutory and regulatory requirements, municipalities have the authority to negotiate and enter into Host Community Agreements (“HCAs”) or HCA Waivers with license applicants, Marijuana Establishments (“MEs”) licensees and Medical Marijuana Treatment Centers (“MTCs”) (collectively, the “licensees”). Given that license applicants must navigate municipal processes before the Commission considers its license application, municipalities play an early and essential role in selecting license applicants, including whether Social Equity Businesses, Economic Empowerment Priority Applicants, and Social Equity Program Participants will be considered for licensure by the Commission and become part of the cannabis industry. Please see the Commission’s Guidance on Municipal Equity for additional information (*please note, this guidance is forthcoming*).

III. HCAs/HCA Waivers: New and Continued Operations

Municipalities must act reasonably, and in good faith, when negotiating HCA terms with license applicant and licensees that seek to operate or continue to operate within its community.⁸ The statute on HCAs, G. L. c. 94G, § 3 (d) (1), requires that:

“A marijuana establishment or a medical marijuana treatment center seeking a new license or renewal of a license to operate or continue to operate in a municipality that permits such operation shall negotiate and execute a host community agreement with that host community setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within the host community, which shall include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment or medical marijuana treatment center.”

Pursuant to Chapter 180 and the previous version of G.L. c. 94G, any license applicant that seeks a new license from the Commission must first have obtained an HCA. Additionally, subject to the same laws, MEs and MTCs that want to continue to be licensed and operate in the Commonwealth require an active HCA. As part of its previous requirements, the Commission only required certification that an HCA had

⁷ G. L. c. 94G, § 1.

⁸ 935 Code Mass. Regs. § 500.180(2)(d); 935 Code Mass. Regs. §501.180(2)(d).



been executed and submission of documented proof uploaded as part of the license applicant’s initial license application. Chapter 180 and Commission regulations have provided updated requirements and responsibilities around HCAs.

On and after March 1, 2024, the Commission will require license applicants to submit their currently executed and compliant HCA—versus just a certification form—for review and certification as part of a license applicant’s initial license application. Additionally, all licensees seeking to renew their license must also submit their currently executed and compliant HCA for review and certification as part of their license renewal application. **As will be discussed in upcoming sections, an HCA Waiver may be executed and utilized in lieu of an HCA.**

IV. HCAs: Governing Rules

Essentially, HCAs are contractual agreements usually between two parties: license applicant/ licensee and the municipality (the “Parties”). The Commission is not a party to these agreements—instead, Chapter 180 has granted the authority and requires the Commission to assess and certify these agreements for compliance purposes with applicable laws and regulations. The following subsections outline elements of HCAs that are strictly required, permissible, or strictly prohibited.

HCA Provisions: Identifying Information Related to the Parties

Commission regulations require that each HCA contain certain identifying information regarding the Parties subject to the agreement. The following terms shall be included in every compliant HCA:

- Type of operations covered under the HCA (e.g., cultivation, retail, social consumption, etc.);
- Execution date of the HCA by the Parties (i.e., the date the Parties sign the HCA);
- Effective date of the HCA (i.e., the date the HCA begins to be binding to the Parties);
- Duration of the HCA (i.e., the date the HCA is ends and is no longer binding to the Parties);
- Name, signature, and title of the person authorized to enter into the HCA for the municipality; and
- Name, signature, and title of the person authorized to enter into the HCA for the license applicant or licensee.



HCA Provisions: All Stipulated Responsibilities of the Parties

The main purpose of the HCA is to ensure that the Parties understand their responsibilities to each other. Therefore, the Parties shall ensure that each HCA contains clear and specific statements of all stipulated responsibilities between them. At a minimum, the following responsibilities provisions must be included in the HCA:

- A provision requiring the municipality to annually transmit its invoice of claimed impact fees to the licensee within one (1) month of the anniversary of licensee's final license date; and
- A provision explicitly identifying any generally occurring fees to be charged by the municipality to the licensee (i.e., water and sewer fees, trash pickup fees, property tax, etc.).

As alluded to above, a municipality shall not impose unreasonable conditions. Provisions of an HCA may be presumed reasonable, found unreasonable, or additional explanation from the Parties may be sought to perform an adequate evaluation. A provision may be presumed reasonable if:⁹

- The condition is required under a municipality's local rules, regulations, ordinances, or by-laws;
- The condition has been deemed necessary to ensure public safety and proposed by the chief law enforcement authority and/or fire protection chief in a municipality with explanation and detail why the condition is necessary for public safety;
- The condition has been deemed necessary to ensure public health and proposed by the chief public health authority in a municipality with explanation and detail why the condition is necessary for public health;
- The condition is a local requirement customarily imposed by a municipality on other, non-cannabis businesses operating in the community;
- The condition is required by law;
- The condition does not conflict with other laws; or
- The condition is otherwise deemed reasonable by the Commission based on particular circumstances presented by the HCA or contracting parties.

HCA Provisions: CIFs

An HCA may also include provisions and terms regarding CIFs, however, CIFs are not mandatory and

⁹ 935 Code Mass. Regs. § 500.180(2)(e)2.; 935 Code Mass. Regs. § 501.180(2)(e)2.



may be waived by the municipality. Otherwise, the CIF provisions and terms must be structured appropriately and consistently with G. L. c. 94G, § 3 (d), 935 Code Mass. Regs. § 500, 935 Code Mass. Regs. § 501, and applicable case law.

Statutory and regulatory requirements related to CIFs shall comply with the following:

- Be Reasonably Related to the costs imposed upon the municipality by the operation of the licensee;
- Not amount to more than three (3) percent of the gross sales of the license;
- Not be effective after the license’s eighth year of operation;
- Commence no sooner than the date the license is granted a final license by the Commission; and
- Not mandate a certain percentage of total or gross sales as the community impact fee.

Please note, “Reasonably Related” means a demonstrable nexus between the actual operations of an ME or MTC and an enhanced need for a municipality’s goods or services in order to offset the impact of operations.¹⁰ Fees customarily imposed on other non-marijuana businesses operating in a municipality shall not be considered Reasonably Related.¹¹

Municipalities are encouraged to develop a process for monitoring claimed impact fees. On renewal, the municipality or licensee may seek to renegotiate the claimed impact fee if there is a reasonable basis to question whether the fee is Reasonably Related to the costs imposed upon the municipality by the licensee’s operations as required by G. L. c. 94G, § 3 (d).

Additional guidance on reporting and certification of CIFs by the Parties and the Commission is forthcoming in a separate publication.

Prohibitive Provisions and Terms of an HCA

To ensure compliance with the wording and intent of Chapter 180, the Commission has adopted policies through regulations that govern prohibitive provisions and terms of HCAs. No HCA will be certified by the Commission that contains the following provisions or terms:

- A promise to make a future monetary payment, in-kind contribution, or charitable contribution other than a Community Impact Fee (“CIF”);¹²

¹⁰ 935 Code Mass. Regs. § 500.002; 935 Code Mass. Regs. § 501.002.

¹¹ *Id.*

¹² 935 Code Mass. Regs. § 500.180(2)(k)1.; 935 Code Mass. Regs. § 501.180(2)(k)1.



- A requirement that the CIF be a certain percentage of a licensee’s total or gross sales as a term or condition;¹³
- A demand of a CIF exceeding 3% of the gross sales of a licensee as a term or condition;¹⁴
- A provision that discourages any party from bringing a civil cause of action or other legal challenge relative to an HCA or to an individual term or provision of an HCA;
- A provision that requires an applicant or licensee to make upfront payments as a condition for operating in the municipality;
- A provision waiving a licensee’s ability to dispute whether impact fees claimed by a municipality are reasonably related and properly due and payable as a CIF;
- A provision that categorically deems a municipality’s claimed impact fees to be reasonably related or that otherwise excuse a municipality from calculating impact fees based on the actual operations of a licensee;
- A provision that imposes legal, overtime, or administrative costs or any costs other than a CIF on a licensee with the exception of a licensee’s tax obligations or its responsibility for paying routine, generally occurring municipal fees;
- A provision that obligates a licensee to set aside money in an escrow, bond, or other similar account for a municipality’s use or purposes; and
- A provision including or otherwise deeming good faith estimates, unquantifiable costs, generalized expenses, or pro-rated expenses as a CIF.

The preceding items are not an exhaustive list of prohibitive provisions or terms. The Parties to an HCA are encouraged to ensure compliance by reviewing the Commission’s regulations governing prohibitive provisions or terms.

Prohibitive Acts of the Parties Regarding HCAs

In addition to the prohibitive provisions and terms that are not allowed as part of a compliant HCA, the Parties must act and negotiate in good faith. The following acts are prohibited by the Parties:

- No Party will use inducements to negotiate or execute an HCA;¹⁵
- No municipality shall negotiate or renegotiate an HCA through the use of undue influence, duress, coercion, intimidation, threats, or any strong-arm tactics including by threat of dissolution of the HCA;¹⁶

¹³ 935 Code Mass. Regs. § 500.180(2)(k)3.; 935 Code Mass. Regs. § 501.180(2)(k)3.

¹⁴ 935 Code Mass. Regs. § 500.180(2)(k)4.; 935 Code Mass. Regs. § 501.180(2)(k)4.

¹⁵ 935 Code Mass. Regs. § 500.180(2)(k)5.; 935 Code Mass. Regs. § 501.180(2)(k)5.

¹⁶ *Id.*



- No municipality may rely on other written instruments, contracts, or agreements to impose terms or conditions on a license applicant or licensee outside of an HCA; and
- No municipality may enforce a contractual financial obligation, other than a CIF, that is explicitly or implicitly a factor considered in or included as a condition of an HCA.¹⁷

HCA: Miscellaneous Permissible Provisions and Terms

The Parties can agree on additional provisions and terms that may vary, however, shall be compliant with applicable laws and regulations. The following is neither an exhaustive nor exclusive list, but includes potential provisions and terms of an HCA:

- [Municipality] agrees to submit to the Commission certification of compliance with applicable local ordinances and by-laws relating to the [Company]’s application for licensure and/or operations, 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 [Company] in any particular way other than in accordance with the municipality’s governing laws.
- The [Company] 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 [Company] from hiring the most qualified candidates and otherwise complying with all Massachusetts anti-discrimination and employment laws.
- A key-and-lock system shall not be the sole means of controlling access to the licensed premises of the [Company]. The [Company] 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 Commission regulations.
- In the case that the [Company] 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 [Company] may terminate this agreement [#] days after the cessation of operations of any facility within [Municipality]. The [Company] 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.

¹⁷ 935 Code Mass. Regs. § 500.180(2)(k)2.; 935 Code Mass. Regs. § 501.180(2)(k)2. (please see the regulations for the two exceptions to this law).



- The [Municipality] and [Company] agree to work together in support of the [Company]'s Diversity Plan and Positive Impact Plan. Additionally, the Parties agree to share data biannually on the progress or success of the stated plans.
- The [Municipality] and [Company] mutually agree that the [Municipality] will not seek or claim CIFs from the [Company] for the duration of the agreement.

V. Available Option: Utilization of the Commission's Model HCA Template

As noted above, all license applicants and licensees seeking a new license or a renewal of a license shall have an HCA that complies with the law or a compliant HCA Waiver.¹⁸

Chapter 180 granted the Commission the authority to author and provide a template agreement for license applicants, licensees, and municipalities—a Model HCA. To streamline the negotiation process, the Commission has created the Model HCA that municipalities, license applicants, and licensees can use to secure an agreement. This Model HCA template provides standardized language, potential terms, and sections that include authorized operations, safety plan, business location, compliance, annual payments, security, energy use, and equity provisions. If used properly, and not substantially modified, an HCA submitted which is determined to conform with the Model HCA will be presumed compliant.¹⁹

Proper utilization of the Model HCA can have the following potential benefits for any party:

- Fill-in-the-blank template HCA;
- Reduced consultant costs;
- Reduced time in negotiations;
- Reduced legal counsel costs;
- Less time for Commission review and response on applications; and
- An interim option for Parties that have a current, but non-compliant, HCA, so that licensees who need to renew are able to continue to operate.

VI. Available Option: HCA Waiver

One major change enacted by Chapter 180 is the explicit option of the Parties to waive the HCA requirement. Unlike other waivers governed by the Commission's regulations, this is a statutory option

¹⁸ 935 Code Mass. Regs. § 500.180(2); 935 Code Mass. Regs. § 501.180(2).

¹⁹ 935 Code Mass. Regs. § 500.180(2)(c); 935 Code Mass. Regs. § 501.180(2)(c).



provided in Chapter 180 and is subject to the consent of the Parties, not the Commission. If the Parties execute an HCA Waiver, the executed document shall be communicated to the Commission by the license applicant or licensee in their license or license renewal application.

As with HCAs, HCA Waivers require certain information including the following:

- Identification of the specific application or license number(s) covered by the waiver;
- Identification of the business name of the license applicant or licensee covered by the waiver;
- Name, signature, and title of the person authorized to enter into the HCA Waiver for the municipality;
- Name, signature, and title of the person authorized to enter into the HCA Waiver for the license applicant or licensee;
- The date(s) of execution by the Parties; and
- An attestation that the HCA Waiver was mutually agreed upon by both Parties and executed in good faith.

Additional relevant information regarding HCA Waivers that the Parties should be cognizant of include the following:

- An HCA Waiver constitutes a total relinquishment of the HCA requirement – the Parties cannot use both an HCA and HCA Waiver to govern their relationship and responsibilities at the same time;
- An HCA Waiver cannot contain an expiration date or conditions or be the product of inducement;
- An HCA Waiver may be executed after the execution, and in place thereof, of an HCA; and
- An HCA Waiver that is executed and recorded with the Commission remains in full force and effect until a subsequent compliant HCA is approved.

Proper utilization of an HCA Waiver can have the following potential benefits for any party:

- Fill-in-the-blank template HCA Waiver;
- Reduced consultant costs;
- Reduced time in negotiations;
- Reduced legal counsel costs;
- Less time for Commission review and response on applications; and
- An interim option for Parties that have a current, but non-compliant, HCA, so that licensees who need to renew are able to continue to operate.



VII. Commission Review and Certification of HCAs/HCA Waivers

On and after March 1, 2024, Commission staff will review and ensure compliant HCAs or HCA Waivers as part of the submission or resubmission of a new or renewal license application. The Commission will review the applications containing the HCAs or HCA Waivers within 90 days.

After review, if the HCA or HCA Waiver is found to be non-compliant with applicable laws and regulations, the Commission will send a request for information and/or determination notice to both the license applicant/licensee and the municipality containing the following information:

- Factual basis of the finding of non-compliance;
- Parties' option to correct the non-compliance and submit an amended HCA;
- Parties' option to submit an HCA Waiver; or
- Parties' option to execute and utilize the Commission's Model HCA on an interim basis.

New and renewal license applications will not be allowed to proceed in the licensure process unless, and until, a compliant HCA or HCA Waiver is certified by the Commission.

VIII. Equitable Relief Option

Municipalities may choose to discontinue relations with licensees but shall not do so in bad faith. Municipalities shall notify the licensee if they intend to discontinue relations. Upon receipt of this notice, the licensee may submit a [request for Equitable Relief](#). The policy regarding Equitable Relief is intended to provide a possible option for licensees to continue to operate or make other business decisions without necessarily ceasing operations immediately.

Licensees seeking Equitable Relief shall submit a request to the Commission with the following:

- Identifying specific facts of the situation;
- The municipality's notice of intent to discontinue relations; and
- Any other supporting documentation or information for seeking relief.

The Commission will review each Equitable Relief request and may exercise its discretion to grant or deny relief. If the Commission grants relief, possible relief options that could be granted include the



following:

- Extension of the license expiration date without additional fees;
- Waiver of a change of location fee if the licensee seeks to relocate; or
- Institution of procedures for winding down operations.

IX. Complaints of Non-Compliance

The Commission may investigate any complaint alleging non-compliance with the HCA and municipal equity regulations and will take enforcement action if necessary. Failure by a municipality to correct the noncompliant conduct may result in one or more of the following:²⁰

- Issuance of sanctions pursuant to 935 Code Mass. Regs. § 500.360 and § 501.360;
- Loss of a municipality's good compliance standing for purposes of 935 Code Mass. Regs. § 500.180(2)(g) and § 501.180(2)(g);
- Identification of a municipality's lack of good compliance standing in a form and manner determined by the Commission; or
- Abstaining from consideration of any new license applications affiliated with a municipality until a municipality's good compliance standing is restored.

X. Seeking Counsel, Support, and Questions

Municipalities, license applicants, and licensees are encouraged to seek legal advice from a licensed attorney with respect to municipal by-laws, requirements, and processes, as well as negotiations regarding HCAs.

Other available resources:

- The Cannabis Control Commission's Guidance on Municipal Equity (forthcoming as of February 2024).
- 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 or email via equity@cccmass.com.

²⁰ 935 Code Mass. Regs. § 500.180(3)(d)4.; 935 Code Mass. Regs. § 501.180(3)(d)4.



- 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.

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

