



APR
10
2023

Testimony

In developing regulations, MMA urges CCC to avoid infringing on existing host community agreements

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Cannabis Control Commission

Attn: Shawn Collins, Executive Director

Union Station

2 Washington Square

Worcester, MA 01604

Delivered Electronically

Dear Chair O'Brien, Commissioner Camargo, Commissioner Concepcion, Commissioner Roy, and Commissioner Stebbins,

On behalf of cities and towns in Massachusetts, including the many communities with existing recreational cannabis licensees operating within their borders, we are writing to offer suggestions on the implementation of Chapter 180 of the Acts of 2022, *An Act Relative to Equity in the Cannabis Industry*. Recognizing that cities and towns are vital stakeholders in the continued success of the cannabis industry in Massachusetts, we are writing to detail how the upcoming regulatory process through the Cannabis Control Commission (CCC) can best meet the important goals related to social equity while also protecting the interests and enthusiasm of municipal partners.

As you know, cities and towns led the way in deciding whether to open neighborhoods to commercial marijuana enterprises and have negotiated in good faith to execute host community agreements (HCAs), including mutually agreed-to provisions on community impact fees. More than 1,000 such contracts have been put in place, establishing the platform for growth of the industry in Massachusetts. While constitutional tenets protect existing contracts from statutory encroachment, the process outlined in Chapter 180 has opened the door to interference in these properly executed HCAs by licensees and special interests in the cannabis industry.

Regulations that would retroactively apply to host community agreements that were executed before the law's passage would invite substantial litigation under the contract clause of the U.S. Constitution. This would be costly to municipalities and provide an unnecessary disincentive for local acceptance by additional communities going forward, squelching growth of the industry. This would provide a counterproductive marketplace advantage for incumbent recreational enterprise operators and would jeopardize the primary intent of the new law, which is focused on accelerating social equity entrants in Massachusetts. Further, preventing the collection of fees by municipalities as agreed upon in their HCAs may also constitute an unlawful taking of revenue sources, as prohibited under M.G.L. Ch. 29, Sec. 27C.

Host community agreements have a term of five years, with many expiring shortly. Upending the industry through costly litigation serves little purpose given this timeline and the burgeoning industry's long future. Contracts must be allowed to continue unaltered until their completion. Only after that time would it be fair and legally sound to apply newly promulgated regulations to HCAs.

Two-tiered approach

Therefore, as you move forward with the regulatory process, we strongly urge a two-tiered approach: one for license renewal of firms with existing HCAs, which were negotiated in good faith and are protected by the Contract Clause of the Constitution, and one for the licensure and license renewal of firms with new HCAs that were executed after the new law's effective date. This would move the industry forward by avoiding statutory encroachment on existing HCAs, prevent extensive and costly legal challenges, match the legislative intent to create opportunities for social equity firms, and protect taxpayers and municipalities from destabilizing and unfair retroactive changes.

We greatly appreciate the CCC's work and engagement with stakeholders to meet the important opportunity presented by Chapter 180 in supporting equity in the cannabis industry. The MMA is committed to working with you to meet the important goals of the cannabis equity law and promoting long-term growth for the cannabis industry in the Commonwealth.

If you have any questions, please do not hesitate to have your office contact me or Legislative Analyst Ali DiMatteo at adimatteo@mma.org or 617-426-7272, ext. 124, at any time.

Thank you very much.

Sincerely,

Geoffrey C. Beckwith
MMA Executive Director and CEO

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