

## Cannabis Control Commission Regulatory Amendments Impacting Municipalities (Part III)

### Prepared for the January 2024 MMA Business Meeting and Trade Show

This third installment of a three-part memorandum explores recent regulatory changes regarding social equity standards, Social Equity Businesses and Participants, and what you need to know about the upcoming May 1, 2024, deadline. The first and second installments of this update addressed significant changes to the Host Community Agreement (the “HCA”) process, the calculation and documentation of CIFs, and new role of the Cannabis Control Commission (the “CCC”), pursuant to recent legislation, known as “[An Act Relative to Equity in the Cannabis Industry](#)” (the “Act”).

The Act also authorized the CCC to establish procedures for Host Communities to encourage and enable full participation in the regulated marijuana industry by people from communities that have been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities. In accordance with the Act, the CCC promulgated amended regulations, [935 CMR 500.000](#) and [935 CRM 501.000](#), on October 27, 2023. As discussed in a previous [eUpdate](#), these new regulations seek to promote and encourage full participation by creating mandatory social equity standards and best practices governing the HCA and licensing processes.

#### **SOCIAL EQUITY STANDARDS AND MANDATORY TRANSPARENT PRACTICES**

By May 1, 2024, Host Communities must adopt local rules or bylaws that comply with the CCC’s new “Equity Standards for Host Communities to Promote and Encourage Full Participation in the Regulated Marijuana Industry.” Host Communities must submit an attestation to the CCC of their compliance that specifically identifies the rules or bylaws adopted, as well as copies of an “Equity Plan” to the CCC. The CCC has yet to issue guidance on what form the attestation must take, but presumably an affidavit will be sufficient. Host Communities must also submit their Equity Plans to the CCC.

Municipalities should be aware that failure to comply may result in fines, after receiving notice and opportunity to comply, no sooner than May 1, 2025.

**Publication.** Host Communities must now publicize certain information in a conspicuous location at their offices and on their website in an effort to make the process of understanding the requirements to locate a marijuana business in a particular municipality clear and accessible to all. The “local approval process”, for purposes of compliance, is defined by the CCC “the steps involving a host community’s cannabis licensing, including, but not limited to, zoning, all associated fees, deadlines, and meeting schedules for local bodies involved in such processes.” At minimum, the CCC now requires publication of:

- A list of all required steps in the local approval process, including all associated fees, deadlines, meeting schedules for local bodies<sup>1</sup> involved in the local approval process;
- Identification of key individuals involved in the local approval process, including their name, title, and business address and contact information (such as email address or phone number);
- A list of all documents and forms required by the Host Community in local approval process, in an electronically downloadable form and paper form;
- Identification of application criteria for local approval to operate a marijuana business, and scoring methodologies relied on by the Host Community;
- General scoring information for all applicants and the Host Community's scoring of each individual applicant;
- The Host Community's explanation, in narrative form, of its reasoning for the approval or denial of an application; and
- Any other information later required by the CCC.

In addition, Host Communities must publish data regarding their total applicant pool. This data must identify each Social Equity Business and license applicant that has been designated as a Social Equity Program Participant or Economic Empowerment Priority Applicant, or who has been pre-verified.

**Equity Plan.** Host Communities are also required to establish an Equity Plan to promote and encourage full participation in the industry by individuals from communities disproportionately harmed by cannabis prohibition and enforcement. As above, this plan must be published by the Host Community at a conspicuous location at its offices and on its website. The plan should encourage applications from business and individuals that would meet the definition of Social Equity Businesses, Social Equity Program Participants, and Economic Empowerment Priority Applicants as determined by the CCC. It must include goals, programs, and measures the Host Community will use to promote and encourage participation. The CCC has not yet, however, issued a model plan or guidance for municipalities on this topic.

**Best Practices.** The regulations mandate that Host Communities adhere to the CCC's "best practices" for HCA negotiations with individuals or entities that have pre-verified or verified pursuant to 935 CMR 500.101(7), Social Equity Businesses, and License Applicants that have been designated as Social Equity Program Participants or Economic Empowerment Priority Applicants as well.

***Standard Evaluation Form:*** Best practices include the development of a standard evaluation form (or adoption of a form developed by the CCC<sup>2</sup>) by the Host Community that scores components of an application with

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<sup>1</sup> This presumably includes the select board, board of health, building commissioner, planning board, zoning board of appeals, conservation commission, and any other board that may be implicated in the process. Host Communities may wish to create a link on their municipal websites to the board and committee meetings, and relevant calendar events, to help ensure compliance.

<sup>2</sup> The CCC has not yet issued a model evaluation form.

consideration of equity in the overall evaluation score. At least 25% of the score must consider social equity. The equity component must include the following factors:

- If the applicant is a Social Equity Business;
- If the applicant is a Social Equity Program Participant;
- If the applicant is an Economic Empowerment Priority Applicant;
- If the applicant has a prior Marijuana-related criminal offense(s) or conviction(s);
- If the applicant is part of an Area of Disproportionate Impact; and
- If the individual applicant, or a majority of an entity applicant, is of Black, African American, Hispanic, Latino, Native American, or indigenous descent.

*Caps on Marijuana Businesses:* Host Communities that cap the number of marijuana businesses in their municipality but later choose to eliminate or increase the cap must, as a best practice, reserve at least half (and not less than one) of those licenses, above the previously established cap, for Social Equity Businesses, Social Equity Program Participants, and Economic Empowerment Priority Applicants. Host Communities may seek an exemption from this regulatory requirement by submitting a waiver request to the CCC.

**Presumption of Compliance.** Host Communities will be presumed to meet the CCC’s minimum acceptable equity standards for promoting and encouraging full participation in the regulated marijuana industry by taking one of the three actions listed below. At this time, however, we recommend communities consult with their legal counsel before adopting any of these measures as special legislation may be required for the same.

- Adopting a bylaw to exclusively allow Social Equity Businesses for three years or until the goals<sup>3</sup> of the exclusivity period are met;
- Adopting the CCC’s Model Ordinance or Bylaw<sup>4</sup> to permit Social Equity Businesses; or
- Creating a 1:1 local approval process for equity applicants, where a general applicant can only be approved after a Social Equity Business has begun operations.

**Consequences of Noncompliance.** Any interested party can file a complaint with the CCC alleging a Host Community’s noncompliance with social equity requirements. If a Host Community is found in violation, the CCC may impose fines equal to the total Community Impact Fees for all marijuana businesses in the Host Community during the prior calendar year. These fines will not begin to be assessed until May 1, 2025.

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<sup>3</sup> It is unclear if these are the goals set by the Host Community in its Equity Plan or if these are separate goals that will be set by the CCC. The CCC has not yet issued any guidance to clarify this issue.

<sup>4</sup> The CCC has not yet issued a model ordinance or bylaw.

The CCC may also identify on its website any municipality or Host Community that has been assessed a fine for equity noncompliance. The Host Community may seek an administrative hearing before the CCC to appeal a finding of noncompliance.

### **Equity Standards During HCA Negotiations**

In addition to the above mandatory transparency practices, special consideration and priority must be given to Social Equity Program Participants, Economic Empowerment Priority Applicants and Social Equity Businesses, as well as an individual or entity verified or pre-verified as such by the CCC, during HCA negotiations.

A business in the process of certification can request that the CCC provide confirmation of its pre-verified status to Host Communities so that the HCA process can move forward concurrently. Should a business's pre-verified status change, the business is required to notify the Host Community which may need to reassess priority based on the list of pending applicants.

Pursuant to the CCC's regulations, a Host Community may waive or reduce fees for an equity party to an HCA negotiation, including, but not limited to CIFs, zoning and occupancy fees. Again, we recommend that Host Communities consult with their legal counsel to determine whether any waivers are appropriate and if so, which public body or official within the municipality would be responsible for approving the same.

***Required Practices.*** During the HCA negotiation process with equity parties, Host Communities must:

- Prioritize negotiations of HCAs with equity parties;
- Engage in an ongoing dialogue by providing multiple opportunities for discussion and negotiation of HCA terms including, at minimum, two conferences;
- Include any attorney, representative, or other advocate, if elected by an equity party, in all negotiation discussions and conferences;
- Promote language access by providing a certified interpreter or translator to assist an equity party during all negotiation discussions and conferences, if elected by an equity party;
- Provide reasonable opportunities for an equity party to review a proposed HCA, HCA term or condition outside of a negotiation conference, or to seek review or input by a third party of their choice.
- Negotiate the terms of an HCA in good faith, with consideration of flexible terms that may mitigate particular challenges affecting an equity party, such as access to capital, with all terms and clauses conspicuously identified and openly discussed; and
- Allow an equity party to propose an amendment to, or seek cancellation of, an HCA within 30 days from the date of execution of the HCA.

### **Equity Standards To Positively Impact Certain Communities**

Perhaps the most unclear and vague provision of the new regulations is the requirement for Host Communities to develop a plan that will positively impact one or more communities that were disproportionately harmed by

marijuana prohibition and enforcement. There will likely be some overlap between this plan and aforementioned Equity Plan, as both require Host Communities to outline the goals, programs, and measurements the Host Community will pursue. Additionally, this plan, like the Equity Plan, must be published on the municipal website and posted in a conspicuous location in Town offices. The CCC defines these disproportionately harmed communities as those with:

- Past or current residents of geographic areas of disproportionate impact;
- State-designated Economic Empowerment Priority Applicants;
- State-designated Social Equity Program participants;
- Massachusetts residents with a past drug conviction; and
- Massachusetts residents with parents or spouses with drug convictions.

At this time, it is not entirely clear what the CCC had envisioned when establishing this requirement and we anticipate that the CCC will develop guidance documents to help municipalities understand what will be expected to ensure compliance with this new regulatory requirement.

### **Next Steps**

There is no “one size fits all” sample policy that could or should be adopted in every municipality, as development of such policies involve local considerations. We will continue to work with municipalities to develop appropriate policies and procedures to promote equity in the industry as required by the regulations based on, among other things, each municipality’s unique physical characteristics, demographics, and guidance provided by the CCC. In the meantime, where the regulations require that these policies and procedures be adopted by May 1, 2024, but the CCC has not yet provided final guidance, municipalities are encouraged to update their websites and create a dedicated page as an initial step toward adopting a more fully developed policy.

For further information, please contact your KP Law attorney at 617.556.0007 with questions or contact Attorneys Lauren F. Goldberg ([lgoldberg@k-plaw.com](mailto:lgoldberg@k-plaw.com)) or Nicole J. Costanzo ([ncostanzo@k-plaw.com](mailto:ncostanzo@k-plaw.com)).

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