

Municipal Alert
August 19, 2022

MARIJUANA REFORM BILL BECOMES LAW

On August 12, 2022, Governor Charlie Baker signed S. 3096, “An act relative to equity in the cannabis industry,” (“Act”) into law. The Act reforms Massachusetts’s existing marijuana laws, particularly with respect to host community agreements (“HCAs”), community impact fees (“CIFs”), and social consumption sites (e.g. marijuana cafes). The Act empowers the Cannabis Control Commission (“Commission”), the state regulatory agency, to exert greater control over HCAs and their CIFs. Municipalities levy CIFs on cannabis businesses to account for the costs they impose on the municipality as a result of their operations. Additionally, the Act allows municipalities to permit on-premises social consumption of marijuana at designated sites. Other notable provisions of the Act include the new Social Equity Trust Fund (“Trust Fund”), changes to the tax law regarding cannabis businesses, and various provisions concerning those persons and communities most impacted by the prior illegality of marijuana usage and sale. Governor Baker vetoed only one section of the final bill: the provision calling on the state to conduct a study of medical marijuana usage in schools.

Host Community Agreements

The Act overhauls the rules surrounding HCAs and their CIFs, granting the Commission authority to ensure the legal compliance of both. The Commission reviews each HCA as part of the license application and renewal process for cannabis businesses. Before granting or renewing those licenses, the Commission must approve the HCA. Should the Commission determine that an HCA is noncompliant, then the business and municipality must renegotiate it prior to the next license renewal submission deadline. Facilitating renegotiations is the requirement that the Commission provide the parties with written notice of the HCA’s deficiencies.

Also, the Commission may now develop a model HCA applicable to social equity cannabis businesses (“SEBs”). SEBs are cannabis businesses operated by individuals disproportionately affected by the old criminal prohibition of marijuana. The model will set minimum standards for such HCAs and provide best practices to be implemented in the negotiation process between SEBs and their host municipalities. To encourage municipalities to host SEBs, the Act provides that they will receive 1% of the tax revenue from SEBs.

Municipalities and cannabis businesses will need to determine whether their existing HCAs are compliant with the Act and, if not, prepare to renegotiate them. Municipalities will need to keep the Act’s more stringent requirements in mind when negotiating HCAs with new cannabis businesses, especially SEBs. Failure to do so may lead to fines.

Community Impact Fees

The Act goes even further in terms of tightening up the rules surrounding CIFs. It requires CIFs to be reasonably related to the costs imposed upon the municipality as a result of the operation of the

Municipal Alert
August 19, 2022

business. In no case can a CIF exceed 3% of a business's gross sales. Further, CIFs cannot mandate payment of a certain percentage of a business's total or gross sales.

CIFs come into effect on the date the Commission issues the final license, and must be paid annually, beginning with the first date of license renewal. However, CIFs cannot extend beyond the business's first eight years of operation.

Municipalities are now required to transmit documentation of the costs imposed on them by operation of a cannabis business to the business within one month of the annual license renewal. Moreover, the Act permits businesses who believe that the provided documentation is not reasonably related to the actual costs imposed on the municipality to bring a breach of contract action against the municipality. Success in such an action can result in damages, attorney's fees, and other costs.

Beyond CIFs, the Act invalidates and renders unenforceable any additional payments or obligations contained in HCAs, such as requirements that cannabis businesses make charitable contributions or non-CIF money payments. However, the Act does not affect payments and charitable contributions that Positive Impact and Diversity Plans require.

Social Consumption Sites

The Act enables municipalities to allow for social consumption sites the passage of new bylaws or ordinances. While legalized back in 2016, social consumption has been stalled because of an inability for most municipalities to hold referendums on the matter. The Act resolves that issue and clears the way for municipalities to approve social consumption sites.

The Commission must first complete a pilot program that has been on hold for several years before social consumption sites will be allowed statewide. That program will involve a small number of municipalities acting as a case study for statewide implementation.

Once the Commission completes its pilot program, municipalities may allow for social consumption sites. To do so, municipalities will need to pass new bylaws or ordinances. Alternatively, a local voter initiative petition process is available to enable on-premises social consumption where local law does not otherwise authorize such consumption.

Other Notable Provisions

The Act has a few more provisions worth noting. It gives cannabis businesses a previously unenjoyed tax advantage by decoupling provisions of the state tax law to allow them to deduct their ordinary business expenses. The continuing federal marijuana prohibition had previously prevented cannabis businesses from realizing those tax benefits.

**Municipal Alert
August 19, 2022**

The Act also establishes the Trust Fund to make grants and loans to social equity program participants and economic empowerment priority applicants. Currently, the Marijuana Regulation Fund receives all the revenue brought in by the state’s marijuana excise tax, application and licensing fees, and industry penalties. Now, the Act directs 15% of those revenues to the Trust Fund. Host municipalities that violate their HCA requirements will have to pay fines to the Trust Fund up to the annual total of all CIFs received from all cannabis businesses operating within their borders. The Trust Fund does not come without its own restrictions, however, as the state can recover up to 100% of granted funds from SEBs if they sell, transfer, or pledge any of their assets or interests in violation of their grant’s terms.

Going Forward

The Act authorizes the Commission to promulgate regulations addressing its review and approval processes for HCAs and CIFs. These regulations stand to play a key role in shaping how cannabis businesses and municipalities interact going forward, and we will continue to monitor important developments in the coming months.

Municipalities and cannabis businesses interested in social consumption sites should follow the Commission’s pilot program. Once that program is complete, municipalities may find themselves facing voter petitions to allow for on-premises social consumption sites. Or they may take it upon themselves to adopt new ordinances or bylaws allowing for such sites.

This Client Alert was prepared by Joseph W. Proctor and was reviewed by Andrew Waugh, David DeLuca, Kevin Bresnahan, and Karis North. If you have any questions about this issue, please contact the attorney assigned to your account or call (617) 479-5000.

This alert is for informational purposes only and may be considered advertising. It does not constitute the rendering of legal, tax or professional advice or services. You should seek specific detailed legal advice prior to taking any definitive actions.

©2022 MHTL