Cannabis Control Commission

GUIDANCE ON HOST COMMUNITY AGREEMENTS

Public Comment Period
Please review and submit feedback on this draft guidance. The public comment period ends on 8/6/18. All comments should be submitted to CannabisCommission@Mass.Gov.

To be licensed, a Marijuana Establishment must execute a Host Community Agreement ("HCA") with the municipality in which it intends to be located. *See* 935 CMR 500.101 (1)(a)(8) and (2)(b)(6).[1] This document provides guidance to municipalities and applicants so that they can work cooperatively to structure an HCA in compliance with M. G. L. c. 94G, § 3(d).

Section 3(d) of Chapter 94G, states, in relevant part:

> "A marijuana establishment or a medical marijuana treatment center 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 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 a medical marijuana treatment center. An agreement between a marijuana establishment or a medical marijuana treatment center 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 marijuana establishment or medical marijuana treatment center and shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years. Any cost to a city or town imposed by the operation of a marijuana establishment or medical marijuana treatment center shall be documented and considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4."

Under the statute, HCAs must include the terms necessary for a Marijuana Establishment to operate within a community. As with any agreement, terms should be negotiated between willing parties to the contract. In this context, the parties to the HCA are the owners or otherwise authorized representatives of the Marijuana Establishment and the contracting authority for the municipality. The parties should negotiate and agree to their respective responsibilities. The parties should also be aware of and abide by the constraints imposed by the plain language of M. G. L. c. 94G, § 3(d). It is clear from the statute, that the Legislature intended for a municipality to act reasonably in negotiating with a Marijuana Establishment that seeks to operate within its community.

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[1] A marijuana establishment with multiple physical locations, such as a craft marijuana cultivation cooperative, must execute a HCA for each municipality in which it has a physical presence.

It is also important that the parties to the HCA be mindful of not only the statutory language in M. G. L. c. 94G, but also the context in which an HCA is required to be negotiated. Section 3(d) of Chapter 94G should be read in conjunction with M. G. L. 64H and 64N, the statutes that allow for the taxation of adult-use marijuana. Taken together, these statutes authorize and limit the assessments allowed on marijuana, marijuana products and Marijuana Establishments.

Taxes

The Legislature explicitly authorized municipalities to adopt an optional local excise tax of up to 3%, as applied to retail transactions, in addition to state sales and excise taxes.[2] In so doing, the Legislature established the ceiling for state-authorized taxes that may be assessed on a Marijuana Establishment:

- the 6.25% sales tax;
- the 10.75% excise tax on marijuana and marijuana products; and
- the optional 3% local tax, which may be applied to retail sales only.

Community Impact Fee. The community impact fee authorized by G.L. c. 94G, § 3(d) is optional and separate and apart from the taxes described above. To be authorized under the statute, and consistent with the decisional law on fees, a community impact fee included in an HCA must meet certain legal requirements.[3] Fundamentally, the fee must be voluntary in nature. Furthermore, the fee must be related to a benefit received by the Marijuana Establishment, which is not received by the general public, and compensate the municipality for the costs of providing the benefit. This benefit must be sufficiently specific and special to the Marijuana Establishment. Assessments characterized as "fees" that do not meet these requirements risk being regarded as a tax, which, unless explicitly allowed under chapters 64H and 64N, are prohibited.

Accordingly, any HCA structured consistent with G. L. c. 94G, § 3(d), may include a community impact fee, provided that the fee is authorized under the statute and meets the legal requirements of permissible fees. A community impact fee included in an HCA must be more than simply called a community impact fee; it must be structured appropriately.

What are examples of required conditions?

Under section 3(d) of Chapter 94G, all HCAs should include terms that describe the conditions that the municipality and Marijuana Establishment must satisfy for that establishment to operate within that host community.

Individual conditions can vary widely. Examples may include, but are certainly not limited to, the following:

- In the case that the Company desires to relocate the Marijuana Establishment within [Name of Municipality] it must first obtain approval of the new location before any relocation

[2] *See* M. G. L. c. 64H, § 2 and M. G. L. c. 64N, §§2 and 3(a).

[3] See generally Emerson College v. Boston, 391 Mass. 415 (1984).

- The Company agrees that jobs created at the facility will be made available to [Name of Municipality] residents. [Municipality] residency will be a positive factor in hiring decisions at the facility, but shall not prevent the Company from hiring the most qualified candidates and complying will all Massachusetts anti-discrimination and employment laws.

- Termination by the Company: The Company may terminate this Agreement ninety (90) days after the cessation of operations of any facility within [Name of 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 ninety (90) days prior to the cessation or relocation of operations. If the Company terminates this Agreement, the final annual payment as defined in Paragraph X of this Agreement shall be paid to the [Municipality] by the Company. The Company shall pay the final annual payment to [Municipality] within thirty (30) days following the date of termination.

- A key-and-lock system shall not be the sole means of controlling access to the Marijuana Establishment. 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 935 CMR 500.110.

- The Company 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 3:00 pm -8:00 pm; Saturdays and Sundays.

- [Municipality] agrees to submit to the Commission, or other such licensing authority as required by law or regulation, certification of compliance with applicable local bylaws relating to the Company'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 Special Permit or other zoning applications submitted by the Company in any particular way other than in accordance with the municipality's governing laws.

- The [Municipality] agrees to work with the Company, if approved, to assist the Company with community support, public outreach and employee outreach programs.

- The Company agrees to work collaboratively with the Municipality and provide staff to participate in a reasonable number of Municipality-sponsored educational programs on public health and drug abuse prevention geared toward public health and public safety personnel.

The type and nature of the conditions included in an HCA are unlimited by Section 3(d) of Chapter 94G. Indeed, the only required prerequisite is that the HCA identifies the party responsible for fulfilling its

respective responsibilities under the agreement. As such, the Commission is likely to take a broad view of acceptable conditions.

What is permissible as part of a community impact fee?

Under Section 3(d), an HCA may also "include a community impact fee for the host community." The statute does not include a definition of what constitutes a "community impact fee" and does not provide for elements of the fee, but it does impose other express limitations on any community impact fee included as part of an HCA:

1. **The community impact fee must be "reasonably related to the costs imposed upon the municipality by the operation of the Marijuana Establishment or medical marijuana treatment center."**

There are two categories of generally acceptable types of fees: user fees and licensing or regulatory fees. A licensing or regulatory fee is based on the municipality's authority to regulate businesses or activities. Regardless of what category it falls into, the fee charged must be in exchange for a benefit received by the Marijuana Establishment in such a way that it justifies assessing the cost to that establishment, even if the public also receives some benefit.

The Commission views fees that are "reasonably related" as those that compensate the municipality for its actual and anticipated expenses resulting from the operation of the Marijuana Establishment. While some latitude is to be given to municipalities to plan for their expenses, the municipality must identify the plan specifics to justify the fee. As section 3(d) requires, it is important that the fee bears some reasonable relation to the costs of providing municipal services or other benefits and not merely be a fee without designation of its origins or justification of its amount. Moreover, there must be a proportionality between the cost or impact claimed by the community and the fee required of the Marijuana Establishment.[4] Municipalities are cautioned against relying on fees that are simply revenue generators in negotiating with Marijuana Establishments and planning their municipal budgets, as these fees may not withstand judicial scrutiny.

Some anticipated costs that may reasonably be included in a fee of up to 3 % of gross sales include services such as:

- Traffic intersection design studies where additional heavy traffic is anticipated because of the location of retail establishment;
- Environmental impact or storm water or wastewater studies anticipated as the result of cultivation;
- Public safety personnel overtime costs during times where higher congestion or crowds are anticipated;
- Additional substance abuse prevention programming during the first years of operation.

[4] Koontz v. St. John's River Water Management District, 133 S. Ct. 2686 (2013); See also Attorney General's letter on Hanover Annual Town Meeting Warrant Articles #22 and 23 (Zoning), December 1, 2014.

2. **The HCA must limit the community impact fee to not more than 3% of the gross sales of the Marijuana Establishment.**

The Commission emphasizes that there is a strict limitation on the amount of the community impact fee that a municipality may collect as part of an HCA. The fee is capped at 3 % of the Marijuana Establishment's gross sales.

Any fee that is more than 3% of gross sales is not a community impact fee. Moreover, any fee whether characterized as a fee, donation or other exaction, including any assessment above 3 % of gross sales, must also comply with the legal requirements discussed above.

3. **The community impact fee is limited to a term of 5 years.**

The Commission reads this provision consistent with the plain language of the statute, which states in relevant part that "the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center and shall not…be effective for longer than 5 years." The community impact fee is strictly limited to a term of 5 years or less. Parties may consider negotiating a fee with a shorter duration. This may be particularly helpful to reaching agreement where the parties have difficulty ascertaining specific costs and wish to revisit the community impact fee once more information relevant to the particular Marijuana Establishment is available. Both G.L. c. 94G, §3 (d) and the Commission's regulations at 935 CMR 500. 103 (4)(d) anticipate the collection and publication of additional information on the costs imposed by the operation of Marijuana Establishments.

Applicants for licensure as a Marijuana Establishment are strongly encouraged to seek legal advice from a licensed attorney regarding the negotiation of an HCA. Eligible licensees and applicants for licensure may be qualified 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 (617) 701-8400.

Cannabis Control Commission

Host Community Agreement Certification Form

The applicant and contracting authority for the host community must complete each section of this form before uploading it to the application. Failure to complete a section will result in the application being deemed incomplete. Instructions to the applicant and/or municipality appear in italics. Please note that submission of information that is "misleading, incorrect, false, or fraudulent" is grounds for denial of an application for a license pursuant to 935 CMR 500.400(1).

Applicant

I, _____, (*insert name*) certify as an authorized representative of _____ (*insert name of applicant*) that the applicant has executed a host community agreement with _____ (*insert name of host community*) pursuant to G.L.c. 94G § 3(d) on _____ (*insert date*).

_____
Signature of Authorized Representative of Applicant

Host Community

I, _____, (*insert name*) certify that I am the contracting authority or have been duly authorized by the contracting authority for _____ *(insert name of host community*) to certify that the applicant and _____ (*insert name of host community*) has executed a host community agreement pursuant to G.L.c. 94G § 3(d) on _____ (*insert date*).

_____
Signature of Contracting Authority or
Authorized Representative of Host Community

Cannabis Control Commission

GUIDANCE ON LOCAL EQUITY

Public Comment Period
Please review and submit feedback on this draft guidance. The public comment period ends on 8/6/18. All comments should be submitted to CannabisCommission@Mass.Gov.

Purpose and Process
The following recommendations were created by the Cannabis Control Commission (Commission) to assist municipalities in creating equitable cannabis policies to mirror the Social Equity program established by the Commission under state law and in response to requests from local elected officials and the Cannabis Advisory Board. As the Commission strives to create a fair and diverse industry across the Commonwealth, collaboration between state and municipal government will be critical to succeeding.

The Commission is charged by state law (St. 2017, ch.55) with ensuring the meaningful participation in the cannabis industry of communities disproportionately affected by the enforcement of previous cannabis laws, small businesses, and companies led by people of color, women, veterans, and farmers.

Broadly, the Commission refers to these statutory mandates as its efforts to create an equitable industry. If there is evidence of discrimination or barriers to entry in the regulated marijuana industry, state law directs the Commission to take remedial measures to address those hurdles.

This guidance is not legal advice, but supplements the Commission's existing Guidance for Municipalities. If municipalities have legal questions regarding marijuana laws in the Commonwealth, they are encouraged to consult counsel.

Background
The possession and use of cannabis became legal in the Commonwealth for adults over 21 years old on December 15, 2016. The Commission fulfilled its statutory obligation under Chapter 55 to issue regulations governing adult-use Marijuana Establishments by filing final regulations on March 9, 2018.

M.G.L ch. 94G, §3 permits a city or town to adopt ordinances and by-laws that impose reasonable safeguards on the operation of Marijuana Establishments, provided that they are not unreasonably impracticable[1] and are not in conflict with state law or regulations.

Municipalities may also institute a ban. These recommendations are 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.

[1] 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." M.G.L. Ch. 94G § 1

Overview
While each municipality is different, a useful overall approach to the local control process is to answer the following questions, with an emphasis on the city or town's local values and meeting the law's equity goals.

- Are caps on licenses necessary?
- What license types will be allowed in the municipality?
- Should a local excise tax be authorized?
- How should each license type be zoned?
- What municipal entity or entities will oversee the prospective licensee process?
- What process will prospective licensees need to follow, and what is the timeline for that process?
- How will prospective licensees be selected to move forward, and what municipal entity or entities will negotiate the host community agreement with them?

Are caps on licenses necessary?
Massachusetts law imposes no statewide cap on the number of marijuana licenses that may be issued. Instead, the Commission reviews each application and determines whether the application satisfies the requirements of the Commission's regulations on adult-use cannabis, 935 CMR 500 and the applicant is suitable or unsuitable for licensing. Such an approach leaves room for businesses of all sizes, rather than forcing a large number of qualified applicants to compete for a small number of licenses – a process that tends to perpetuate existing inequities.

The Commission will not issue a license to an applicant unless (a) the applicant is compliant with local bylaws and ordinances; (b) the applicant has held a community outreach meeting within six months of applying for licensure; and (c) the applicant and municipality have executed a host community agreement.

As the municipal guidance previously issued by the Commission outlines, there are several options available to communities to determine if and how cannabis commerce fits into the fabric of the community. It is a common misconception that communities must act quickly and comprehensively now to determine the future of cannabis sales in the community. In order to open in the community, the businesses will need to satisfy the regulatory requirements of local control, including a signed agreement with the community.

The Commission respects the local control that is granted to municipalities under M.G.L. ch. 94G and encourages communities to consider how cannabis commerce fits into their long-term municipal planning processes. This may include limiting the number and type of Marijuana Establishments, but there is no requirement that communities take that action. For those communities that choose not to impose limitations, the statute provides that municipalities are not required to permit a number of retail Marijuana Establishments in excess of the number that is equal to 20% of liquor licenses issues pursuant to M.G.L. ch. 138, §15 (commonly known as "package stores").

What license types will be allowed in the municipality?
State law and Commission regulations create the following license types: cultivators, product manufacturers (sometimes known as "processors" or "producers" of cannabis oils or concentrates),

retailers, transporters, testing laboratories, research facilities, microbusinesses, and craft cooperatives. More details about each license type can be found in the Commission's Guidance on Types of Marijuana Establishment Licenses.

The Commission created a wide variety of license types, all authorized under state law, to encourage the participation businesses of all sizes. Each license type involves distinct areas of business operations that create jobs in distinct fields. For example, independent testing labs may create jobs for scientists, while microbusinesses and cooperatives may create jobs for those with expertise in agriculture, and transporters may create jobs for drivers.

To encourage an industry that allows for participation from various communities, the Commission recommendation is to allow prospective applicants seeking each type of license to begin the process and hold a community outreach meeting, where residents could raise specific concerns. Applicants may then take the opportunity to address those concerns and move forward in the local selection process. For municipalities that especially value small businesses, it may be appropriate to only allow microbusinesses and craft cooperatives rather than all cultivators and manufacturers.

The Commission is collecting information relative to social consumption and delivery licenses and intends to have draft regulations prepared in February 2018. Under state law, the local controls outlined under M.G.L. ch. 94G, §3 apply to any Marijuana Establishment, including social consumption facilities and delivery businesses if those licenses are authorized under the Commission's regulations.

Should a local tax be authorized?
A municipality may adopt a tax of up to three percent on adult-use cannabis sales by a vote of its legislative body. In many state and local jurisdictions, Massachusetts included, a portion of cannabis tax revenue is earmarked for restorative justice, jail diversion, workforce development, industry specific technical assistance, and mentoring services. Equity goals may similarly be supported by designating part of the local tax or community impact fee, if adopted as part of the host community agreement, for similar local programs.

How should each license type be zoned?
According to feedback from the Cannabis Advisory Board Subcommittee on Market Participation and direct feedback to the Commission, real estate is one of the primary hurdles for small businesses and businesses owned by people from marginalized communities. When municipalities impose overly strict zoning rules and large buffer zones, they sharply limit the number of parcels available to potential operators. This favors large businesses with substantial financial resources that can outbid other potential operators and overpay for a lease or purchase of property—often at the expense of smaller, local companies—and tends to direct large rewards to a small handful of landlords and property owners.

Overly strict local zoning in other states has also led to complaints that cannabis businesses were crowded into small sections of a municipality, often areas with a vulnerable or low-income population. One study examined the locations of medical marijuana dispensaries in Los Angeles and report 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 (Thomas and Freisthler, Examining the locations of medical marijuana dispensaries in Los Angeles, Drug Alcohol Review, 2017).

Please note that Chapter 351 of the Acts of 2016 exempted the cultivation of marijuana from the agricultural exemption in the Zoning Act, M.G.L. ch. 40A §3, therefore retaining local control over the placement of Marijuana Establishments. The law allows, but does not mandate, municipalities to pass bylaws and ordinances governing the "time, place, and manner" of Marijuana Establishments (cultivators, retailers, manufacturers, testing labs, and any other licensed cannabis-related businesses) as well as businesses dealing with cannabis accessories. Additional municipal action is not, however, a requirement, meaning that a municipality could determine that a proposed cannabis-related use falls under an existing use authorized by its bylaws or ordinances.

Therefore, Commission recommendation is to zone cannabis businesses based on the nature of their primary business operations. It may be most appropriate, for example, for cultivators, microbusinesses, and cooperatives to be zoned, respectively, as agricultural, industrial, and manufacturing businesses, while cannabis retailers would be zoned in the same manner as any other retailer. Manufacturers, as defined as a Marijuana Establishments, may be appropriate for multiple zones, as they may encompass small microbusinesses or companies creating edibles in commercial kitchens.

If a community has concerns about the new types of businesses, the community outreach meeting required by the Commission for licensure gives community residents and prospective applicants a chance to discuss their concerns and formalize the solutions in a host community agreement (see next section).

State law establishes a 500-foot buffer around K-12 schools. A municipality may choose to reduce the size of that buffer. It is unclear whether buffer zones around other uses, such as parks, are legally permissible. The Commission suggests that additional buffer zones may not be necessary and cautions communities against acting arbitrarily.

The Commission has made the prevention of diversion of cannabis to individuals under 21 a priority. Current studies do not show any evidence that medical marijuana dispensaries increase youth access and use of cannabis. A recent study showed that overall, the availability of dispensaries within 5-and 25-mile buffers were not associated with recent or current adolescent cannabis use (Shi, Yuyan, *The availability of medical marijuana dispensaries and adolescent marijuana use*, Preventive Medicine, 2016).

A prominent meta-analysis of studies estimating the effects of medical marijuana laws reported that none of the studies found significant changes in past-month marijuana use following medical marijuana law enactment compared to other states (Sarvet et al., *Medical marijuana laws and adolescent marijuana use in the United States: a systematic review and meta-analysis*, Addiction, 2017).

While there have been no definitive studies on the impact of the presence of adult-use cannabis dispensaries on youth access, the Commission has acted to ensure that licensees understand their responsibilities. The regulations issued by the Commission include extensive provisions around labeling, packaging and marketing, as well as Marijuana Establishment employee training, positive identification checks upon entry to a Marijuana Establishment and inspectional protocols that include a spot check and "secret shopper" program. In addition, the Commission is launching a statewide campaign to educate the public about the safe use of marijuana and the risks associated with failing to use it safely. Preventing diversion to children and adolescents is part of this campaign.

Research suggests that marijuana dispensaries are not associated with increased crime. One study found that the density of medical marijuana was unrelated to property and violent crimes in local areas (Freisthler et al., *A micro-temporal geospatial analysis of medical marijuana dispensaries and crime in Long Beach California*, Addiction, 2016). However, the Commission also acknowledges that crime occurs at Marijuana Establishments as it does at any similar business.

With this in mind, the Commission adopted – and will enforce – stringent security protocols intended to ensure the safety and security of the staff and consumers at Marijuana Establishments as well as the general public in the areas around Marijuana Establishments. Security provisions include requirements that licensees share safety plans with local law enforcement and emergency responders; cameras that record 24 hours per day; perimeter alarm systems; and incident reporting protocols. The Commission also requires the seed-to-sale tracking of all cannabis and cannabis products offered by licensed Marijuana Establishments in Massachusetts.

Like overly restrictive zoning, buffer zones between Marijuana Establishments prolong inequities by exacerbating the scarcity of appropriate real estate. If buffer zones between Marijuana Establishments are enacted, municipalities may consider waiving or reducing the size of the buffer for state-certified economic empowerment applicants or for state-designated participants in the Commission's Social Equity Program. For more information on these programs, see the Commission's Summary of Equity Provisions.

What municipal entity or entities will oversee the prospective licensee process, select licensees to move forward, and negotiate host community agreements?
Once a municipality has established zoning and a selection process, the Commission recommends that it delegate local decision-making authority and accountability related to Marijuana Establishments to one entity. One option is to designate a city or town's local planning board, liquor licensing authority, or other existing entity, so long as the body's existing processes are adjusted to allow for the requirements in the state's marijuana laws – specifically the community outreach meeting and the negotiation of a host community agreement.

An alternative option is to follow the state-level model and create a new board, appointed by local elected officials, whose members have expertise in areas public safety, public health, business, social justice, and local regulation. The board should be vetted for any conflicts of interest and its decision-making, goals, and instructions should be clear and transparent.

To allow for checks and balances, a municipality may prefer to designate one entity to oversee the selection process and another to negotiate the host community agreements.

What process will prospective licensees need to follow, and what is the timeline for that process?
Section 56 of Chapter 55 requires the Commission to prioritize review and licensing decisions for prospective licensees who demonstrate experience in or business practices promoting economic empowerment in communities disproportionately impacted by high rates of arrest and incarceration for drug offenses, in addition to registered marijuana dispensaries. There are 123 applicants that qualify as economic empowerment applicants certified by the Commonwealth. In accordance with the Commission's mandate to promote and encourage full participation in the adult-use cannabis industry by those disproportionately harmed communities, the Commission's recommendation is for municipalities to prioritize review for these economic empowerment applicants at the local level as well. In other words,

those prospective licensees should be reviewed for suitability before others. Some municipalities in Massachusetts are considering prioritizing applicants by allowing them to move forward exclusively for a certain period of time. For example, a municipality may consider only economic empowerment applicants and applicants who are local residents for the first six months.

Regardless of the entity or entities designated to oversee the selection of Marijuana Establishments, the Commission recommends that it begin by designing an objective selection process and clear timeline for prospective licensees. For example, a certain period to demonstrate intent to apply, a certain period for community outreach meetings, a certain period to discuss concerns and ways to address those concerns with the overseeing entity, a certain period for applying objective criteria and selecting which applicants proceed, and finally, a set period for negotiating a host community agreement that reflects the concerns raised and plan to address them. The timeline should include deadlines for both the applicant and the entity overseeing the process.

In order 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 will allow the municipality to announce the process as well as interact with prospective licensees and anticipate their questions.

SUMMARY: Recommendations for Creating an Equitable Industry

Given the unique opportunity to build a large and lucrative industry from scratch, the Commission encourages municipalities to build the licensee selection process in a way that prioritizes the community's individual needs and the Commonwealth-wide commitment to an equitable industry and economic justice. Below is a list of recommendations from this guidance, the state-level licensing process, and other jurisdictions nationwide.

- ALLOW VARIOUS TYPES OF BUSINESSES: In order to encourage an industry that allows for participation from various communities, the Commission recommends allowing prospective applicants seeking each type of license to begin the process and hold a community outreach meeting, where residents could raise specific concerns. Applicants may then take the opportunity to address those concerns and move forward in the local selection process. For municipalities that especially value small businesses, it may be appropriate to only allow microbusinesses and craft cooperatives rather than all cultivators and manufacturers.

- CONSIDER WHETHER CAPS ARE NECESSARY: Instead of instituting a cap on the number of businesses, begin by determining the number of retailers equal to 20 percent of the number of the number of liquor licenses issued pursuant to M.G.L. ch.138, §15 (commonly known as "package stores"). After that number of retailers are open, a municipality may consider pausing to collect data, engage with citizens, and decide whether to permit additional retailers. It is a common misconception that a municipality must take action to ban or proactively cap the number of licenses to prevent an unlimited number of businesses from opening.

- ZONING: Communities should give serious consideration to zoning marijuana businesses based on the nature of their primary business operations. State law establishes a 500-foot buffer around K-12 schools; a municipality may choose to reduce the size of that buffer. The Commission suggests that additional buffer zones may not be necessary and cautions communities against acting arbitrarily. If a community has concerns about the new types of businesses, the community outreach meeting, required by the Commission for licensure, gives community residents and prospective applicants a chance to discuss their concerns and formalize the solutions in a host community agreement

- HOST COMMUNITY AGREEMENTS: Once a community establishes zoning and a selection process, the Commission recommends that it delegate local decision-making authority and accountability related to Marijuana Establishments to one entity, either an existing entity or a new entity. The entity should be vetted for any conflicts of interest and its decision-making, goals, and instructions should be clear and transparent. To allow for checks and balances, a municipality may prefer to designate one entity to oversee the selection process and another to negotiate the host community agreements.

- SELECTION PROCESS: In deciding which companies with which to negotiate a host community agreement, the Commission recommends instituting an objective, transparent selection process intentionally focused on repairing past inequities, beginning with prioritizing review for state-designated economic empowerment applicants. Consider preferences for state-designated Social Equity Program participants, or applications from companies owned by marginalized groups. As

part of the selection process, consider evaluating the company's diversity plan and plan to positive impact communities disproportionately harmed, either in the municipality or generally.