



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

September 19, 2019

City Council President Morad and
Honorable Members of the City Council
City of New Bedford
133 William Street
New Bedford, MA 02740

CITY CLERKS OFFICE
NEW BEDFORD, MA
2019 SEP 19 P 2:36
CITY CLERK

Dear Council President Morad and Honorable Members of the Council:

As you know, in 2017 the City Council approved a Host Community Agreement ("HCA") with Beacon Compassion ("Beacon") that permitted it to engage in the dispensing of marijuana for medical purposes. [See Attachment A] I am enclosing for your consideration a draft First Amendment to Host Community Agreement ("Amendment") between the City and Beacon Compassion, Inc. that would permit Beacon to proceed with the state application process for the sale of adult-use marijuana its proposed facility at 366 Hathaway Road (the "Site"). [See Attachment B]

When the Commonwealth enacted the recent law governing recreational marijuana establishments, it made special provision for medical marijuana establishments that had already received state regulatory approval under a prior state law. Specifically, the state forbid municipalities from enacting local regulations that would prohibit an adult-use marijuana establishment that cultivates, manufactures or sells marijuana or marijuana products in any location in which a medical marijuana treatment center is registered to engage in the same activity. G.L. c. 94G, § 3(a)(1)(i).

It is important to note that, while the City cannot prevent Beacon from exercising its rights under state law to engage in the sale of adult-use marijuana products at its Site, it can, however, still subject adult-use operations to other reasonable time, place, and manner restrictions. G.L. c. 94G, § 3(a)(1). In this case, the City's marijuana zoning ordinance and the City's ordinance establishing a local licensing authority (to the extent that their provisions do not conflict with state law) still apply to Beacon as it proceeds with the development and operation of its facility. These local regulations include the requirement to obtain a Special Permit from the Planning Board and an annual license review/approval by the City's Licensing Board. Beacon will also count toward the cap on the total number recreational marijuana establishments located in the City as set by the marijuana zoning ordinance.

Beacon is subject to the state requirement that all adult-use marijuana establishments enter into Host Community Agreements with the municipalities in which they are located. G.L. c. 94G, §

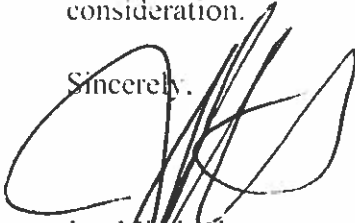
3(d), as well as state regulations that specify that an adult-use marijuana establishment's application for a license to the Cannabis Control Commission ("CCC") is not complete without an executed adult-use Host Community Agreement. 935 CMR 500.101.

Beacon has therefore requested that the City agree to a modification of the 2017 Agreement between the City and Beacon so that its terms and conditions conform with requirements of state law that were not in effect when the Agreement was originally executed. The attached Amendment retains all material terms and conditions of the original Agreement except that it:

- (1) caps the annual host community payment to the City at three percent of gross revenue; and
- (2) limits the term of the host community agreement to five years as called for in state law. G.L. c. 94G, § 3(d).

The Council's approval of this Amendment is hereby requested. Thank you for your consideration.

Sincerely,



Jon Mitchell
Mayor

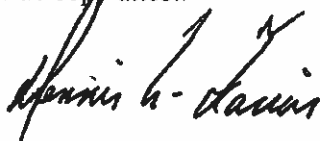
Attachments: A -- 2017 Beacon Compassion Host Community Agreement
B -- "First Amendment to Host Community Agreement"

IN CITY COUNCIL, September 26, 2019

Referred to the Special Committee on Cannabis Regulation and Host Community Agreements Review – Yeas 6, Nays 4.

Dennis W. Farias, City Clerk

a true copy attest:



City Clerk



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

February 22, 2017

City Council President Joseph Lopes and
Honorable Members of the City Council
City of New Bedford
133 William Street
New Bedford, MA 02740

Dear Council President Lopes and Honorable Members of the Council:

I write to inform the Council that my Administration has negotiated a Host Community Agreement with Beacon Compassion Center of Norwood. Beacon Compassion Center is presently seeking approval from the Massachusetts Department of Public Health to operate a medical marijuana dispensary facility at 366 Hathaway Road.

In return for the attached Letter of Support, Beacon Compassion Center has agreed to provide substantial benefits to the City and residents of New Bedford. Among these benefits:

- Beacon will not exercise its exemption from local taxes. Notwithstanding its nonprofit status, Beacon will pay all local taxes, and in doing so, help the City in its efforts to broaden the tax base and reduce the burden on residents and businesses.
- Once the facility is fully operational, Beacon will make annual payments to the City in an amount equal to 3.75% of gross sales. At a minimum the City will receive \$325,000 during the first five years of the agreement.
- It would be operated under a strong facility security plan, and the agreement requires Beacon to operate only at its designated location, which will have little or no neighborhood-level impact.
- Beacon will also work toward employment and vendor goals that advantage local residents and small businesses and support the City's job-creation efforts.

While the Host Community Agreement represents an important step, it is important to also note that many steps remain which are outside the ability of the City to control.

I ask for your support so that we can secure these benefits for New Bedford residents and businesses. Thank you for your consideration on this important matter.

Sincerely,



Jon Mitchell
Mayor

Attachments:

Letter of Support w/ cover letter
Host Community Agreement



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

February 22, 2017

Catherine Cametti, President/CEO
Beacon Compassion Center
900 Washington Street, Suite A
Norwood, MA 02062

Dear Ms. Cametti,

The City of New Bedford has concluded negotiations with Beacon Compassion on a Host Community Agreement that provides substantial benefits to New Bedford residents in conjunction with Beacon's operation of a medical marijuana dispensary facility at 366 Hathaway Road.

To ensure that the review of ARL's application continues to advance without delay at the Massachusetts Department of Public Health (MassDPH), I am providing the attached Letter of Support in advance of the New Bedford City Council's approval of the Agreement. I have directed City staff to work with Beacon to ensure the Council is fully briefed on the Agreement's terms so that the Council is in a position to provide its approval.

Sincerely,


Jon Mitchell
Mayor



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

February 22, 2017

Catherine Cametti, President/CEO
Beacon Compassion Center
900 Washington Street, Suite A
Norwood, MA 02062

Dear Ms. Cametti,

I do hereby confirm the City of New Bedford's support for Beacon Compassion Center, Inc. to operate a Registered Marijuana Dispensary ("RMD") in New Bedford at 366 Hathaway Road.

I have verified with the appropriate local officials that the proposed RMD facility at 366 Hathaway Road is located in a zoning district that allows such use by right or pursuant to local permitting.

Sincerely,

Jon Mitchell
Mayor

HOST COMMUNITY AGREEMENT (HCA)

This Agreement entered into this the 10th day of February, 2017 by and between the CITY OF NEW BEDFORD, acting by and through its Mayor, with a principal address of 133 William Street, New Bedford, Massachusetts (hereinafter the "City") and BEACON COMPASSION CENTER, INC., a Massachusetts not-for-profit corporation with a principal office address of 900 Washington Street, Suite A, Norwood, MA 02062 (hereinafter "Company").

WHEREAS, COMPANY wishes to locate a licensed medical marijuana dispensary at 366 Hathaway Road, New Bedford MA 02740 (hereinafter the "Facility") in the City in accordance with the laws of the Commonwealth of Massachusetts and those of the City;

WHEREAS, COMPANY does not wish to cultivate medical marijuana at the Facility;

WHEREAS, COMPANY, notwithstanding any exempt status, intends to pay all local taxes attributable to its operation, including real estate taxes on the space within which it is located;

WHEREAS, COMPANY desires to be a responsible corporate citizen and contributing member of the business community of the City consistent with the City "New Bedford Works" policy, and in the event the contingencies noted below are met, intends to provide certain benefits to the City over and above the increased employment base and other typical economic development benefits attributable with similar new manufacturing concerns locating in the City; and

WHEREAS, the City believes that the COMPANY'S operation of a medical marijuana dispensary at the Facility location, coupled with its various contributions to the City, as set forth herein, would advance the public good;

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and for the mutual promises set forth below, the parties agree as follows:

1. **Host Community Payment.** In the event that COMPANY obtains a final Certificate of Registration for the operation of the Facility in the City by the Massachusetts Department of Public Health (hereinafter "DPH") and receives any and all necessary and required permits and licenses of the City, and at the expiration of any final appeal period related thereto said matter not being appealed further, which said permits and/or licenses allow COMPANY to locate, occupy and operate the Facility in the City, then COMPANY agrees to:

- a. For the first three (3) calendar years of this Agreement after the issuance of a Certificate as called forth above, the COMPANY shall make a host community payment in an amount equal to three percent (3%) of the total gross sales of the Facility, or \$50,000.00, whichever is greater. Payment for the first year shall be due on the June 30 following at least 12 months after the issuance of a Certificate. Payments for years 2 and 3 shall be due in two installments to be made on December 31 and June 30 of those years. For the purposes of this agreement, "gross sales" shall be the number reported to the Commonwealth as gross sales of the Facility.

- b. For the fourth (4th) year of this Agreement after the issuance of a Certificate as called forth above, the COMPANY shall make a host community payment in an amount equal to three and one quarter percent (3.25%) of the total gross sales of the Facility, or \$75,000.00, whichever is greater. Said payment shall be due in two installments to be made on December 31 and June 30.
- c. For the fifth (5th) year of this Agreement after the issuance of a Certificate as called forth above, the COMPANY shall make a host community payment in an amount equal to three and three quarter percent (3.75%) of the total gross sales of the Facility, or \$100,000.00, whichever is greater. Said payment shall be due in two installments to be made on December 31 and June 30.
- d. For each successive fiscal year of the agreement, payments shall be made as required in paragraph "c" above, with the minimum payment increased or decreased each year by the percentage increase or decrease, if any, during the preceding 12 month period beginning July 1, in the Consumer Price Index for all Urban Consumers-Boston SMSA, published by the Bureau of Labor Statistics.
- e. For so long as the Facility is the sole licensed medical marijuana facility within the City, there shall be no maximum payment under the payments called for above. In the event that the Facility ceases to be the sole such facility licensed in the City, the maximum yearly payment under the percentages called for above shall be \$300,000.00 with the maximum payment increased each year after year 5 by the percentage increase, if any, during the preceding 12 month period beginning July 1, in the Consumer Price Index for all Urban Consumers-Boston SMSA, published by the Bureau of Labor Statistics.
- f. The COMPANY shall, at least biannually, provide the City with copies of all reports submitted to DPH with respect to the financial performance of the Facility.

2. **Payments.** The COMPANY shall make the payments set forth in Paragraph 1 above, to the City of New Bedford. The parties understand and acknowledge that the City is under no obligation to use the foregoing payments in any particular manner.

3. **Other Payments.** COMPANY anticipates that it will make annual purchases of water, and sewer from all local government agencies. COMPANY will pay any and all fees associated with the local permitting of the Facility.

4. **Review.** At least once during every 48 month period, the City and COMPANY will meet to review the commitments and allocations set forth herein. The parties agree to discuss in good faith adjustments to this Agreement, if necessary to maintain the viability of COMPANY business, support local employment, allocate City and COMPANY resources and otherwise secure COMPANY as a member of the business community in the City.

5. **Local Taxes.** The COMPANY shall pay and all local taxes that are imposed upon the operations and/or sales at the Facility. At all times during the Term of this Agreement, property,

both real and personal, owned or operated by COMPANY shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by COMPANY or by its landlord, and neither COMPANY nor its landlord shall object or otherwise challenge the taxability of such property and shall not seek a non-profit exemption from paying such taxes. Notwithstanding the foregoing, (i) if real or personal property owned, leased or operated by COMPANY is determined to be non-taxable or partially non-taxable, or (ii) if the value of such property is abated with the effect of reducing or eliminating the tax which would otherwise be paid if assessed at fair cash value as defined in G.L. c. 59, §38, or (iii) if COMPANY is determined to be entitled or subject to exemption with the effect of reducing or eliminating the tax which would otherwise be due if not so exempted, then COMPANY shall pay to the CITY an amount which when added to the taxes, if any, paid on such property, shall be equal to the taxes which would have been payable on such property at fair cash value and at the otherwise applicable tax rate, if there had been no abatement or exemption; this payment shall be in addition to the payment made by COMPANY under Section 1 of this Agreement.

6. **Community Support.** COMPANY will provide the following indirect support to the City:

- a. Local Vendors – To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, COMPANY will make every effort in a legal and non-discriminatory manner to give priority to local businesses and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the Facility. COMPANY shall use good faith efforts to ensure that at least twenty-five percent (25%) of the vendors and/or contractors utilized by the Facility will be based in the City.
- b. Employment/Salaries - To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, COMPANY shall use good faith efforts to ensure that at least twenty-five percent (25%) of the qualified employees of the Facility will be City residents.
- c. COMPANY shall provide the City with annual reports indicating the percentages of vendors and employees in accordance with paragraphs (a) and (b) above.
- d. The numbers called forth above are based upon the representations of COMPANY. The parties understand and acknowledge that the percentages listed in the preceding paragraphs (a) and (b) constitute a portion of the consideration for the City entering into the within Agreement. In the event that COMPANY fails to meet the percentages called for herein, the parties shall review the Agreement pursuant to Section 4 herein.

7. **Support.** The City agrees to submit to DPH a letter supporting the COMPANY'S application for a Certificate to operate the Facility. The City agrees to support COMPANY's application with DPH but makes no representation or promise that it will act on any other license or permit request in any particular way other than by the City's normal and regular course of conduct and in accordance with their rules and regulations and any statutory guidelines governing them. The

City agrees to use best effort to work with COMPANY, if approved, to help advise COMPANY on their community support and employee outreach programs.

8. **Security.** COMPANY shall maintain security at the Facility at least in accordance the security plan presented to the City and approved by DPH. In addition, COMPANY shall at all times comply with all applicable laws and regulations regarding the operations of the Facility and the security thereof. Such compliance shall include, but will not be limited to: coordinating with the City regarding panic alarms; providing hours of operation; after-hours contact information and access to surveillance operations; and requiring dispensary agents to produce their Program ID Card to law enforcement upon request.

COMPANY shall promptly report the discovery of the following to City police within 24 hours: diversion of marijuana; unusual discrepancies identified during inventory, theft, loss and any criminal action; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses, or other reportable incidents that occur during transport; any suspicious act involving the sale, cultivation, distribution, processing, or production of marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or dispensary agents; an alarm activation or other event that requires response by public safety personnel; failure of any security alarm system due to a loss of electrical power or mechanical malfunction that is expected to last longer than eight hours; and any other breach of security.

9. **Signage and Hours:** The Company shall be allowed not more than one (1) exterior sign with the following requirements:

- a. No more than twenty-five (25) square feet
- b. Shall be attached to the building and shall not extend past the height of eleven (11) feet from the ground.
- c. Shall not extend more than twelve (12) inches from the face of the building.
- d. Shall be externally lit and shall not be lit more than one-half hour before or after hours of operation.

Hours of operation shall be 10 a.m. to 7 p.m.

10. **Approval of Manager:** Within five business days of any request by the City, COMPANY shall provide to the CITY the name and contact information, including but not limited to the information set forth in 105 CMR 725.030, of the person designated as the on-site manager of the Facility. Any such designated manager shall comply with all regulations promulgated by the Massachusetts Department of Public Health, including but not limited to 105 CMR 725.030.

11. **Term and Termination.** This Agreement shall take effect on the day above written, subject to the contingencies noted herein. This agreement shall continue in effect for so long as COMPANY operates the Facility at 366 Hathaway Road. In the event COMPANY no longer does business in the City or in any way loses or has its license revoked by the State, this agreement shall become null and void. The City may terminate this Agreement at any time. COMPANY shall not be required to cease operations at the termination of this Agreement.

12. **Governing Law.** This Agreement shall be governed in accordance with the laws of the Commonwealth of Massachusetts and venue for any dispute hereunder shall be in the courts of Bristol County.

13. **Amendments/Waiver.** Amendments, or waivers of any term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment.

14. **Severability.** If any term or condition of the Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

15. **Successors/Assigns.** This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the City nor COMPANY shall assign or transfer any interest in the Agreement without the written consent of the other.

16. **Entire Agreement.** This Agreement constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

17. **Notices.** Except as otherwise provided herein, any notices given under this Agreement shall be addressed as follows:

To City: Mayor, City of New Bedford
133 William Street
New Bedford, MA 02740
(508) 979-1410
Facsimile (508) 961-3078

With a copy to: City Solicitor, City of New Bedford

To Licensee: Catherine Cametti, President
Beacon Compassion Center Inc.
900 Washington Street, Suite A
Norwood, MA 02062
(508) 735-8682

Notice shall be deemed given (a) two (2) business days after the date when it is deposited with the U.S. Post Office, if sent by first class or certified mail, (b) one (1) business day after the date when it is deposited with an overnight courier, if next business day delivery is required, (c) upon the date personal delivery is made, or (d) upon the date when it is sent by facsimile, if the sender receives a facsimile report confirming such delivery has been successful and the sender mails a copy of such notice to the other party by U.S. first-class mail on such date.

In witness whereof, the parties have hereafter set faith their hand as of the date first above written.

CITY OF NEW BEDFORD

BEACON COMPASSION CENTER, INC.

Jonathan F. Mitchell
Mayor

By: Catherine Cametti
Its: President

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

February 2017

On this _____ day of February, 2017, before me, the undersigned Notary Public, personally appeared the above-named Jonathan F. Mitchell, proved to me by satisfactory evidence of identification, being (check whichever applies): ☐ driver's license or other state or federal governmental document bearing a photographic image, ☐ oath or affirmation of a credible witness known to me who knows the above signatory, or ☐ my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose, as the duly authorized Mayor of the City of New Bedford.

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

February 2017

On this 10th day of February, 2017, before me, the undersigned Notary Public, personally appeared the above-named Catherine Cametti proved to me by satisfactory evidence of identification, being (check whichever applies) ☒ driver's license or other state or federal governmental document bearing a photographic image, ☒ oath or affirmation of a credible witness known to me who knows the above signatory, or ☒ my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose, as the duly authorized President/CEO of Beacon Compassion Center, Inc.

Notary Public
My Commission Expires: _____

