



PART 2: MASSACHUSETTS MARIJUANA RETAIL ESTABLISHMENT LICENSING: WHAT ABOUT THOSE “COMMUNITY IMPACT FEES?”

Under the Massachusetts “recreational marijuana law,” General Laws, Chapter 94G, Sections 1, et. seq., those seeking to operate a Marijuana Retail Establishment (“MRE”) must follow a number of steps in the application process. The first step requires “local” approval by the municipality in which the business will operate, including entering into a Host Community Agreement (“HCA”) with the municipality, setting forth the conditions under which the MRE can operate. Under the state’s law, the provisions of an HCA may—and invariably do—include an annual fee to cover anticipated or actual costs to the municipality, which are reasonably related to the MRE’s operations (a “community impact fee”), and capped at 3% of the MRE’s gross sales for a period of 5 years.¹ The law requires that a municipality document the actual costs incurred as a result of the MRE operating there; that documentation is a public record.

MREs must apply annually to the Cannabis Control Commission (“CCC”) to renew their licenses. Applicable Massachusetts regulations provide that, when seeking to renew its license, an MRE must submit to the CCC a copy of electronic or written documentation showing that it “requested from its Host Community the records of any cost to [the municipality] reasonably related to the operation of the establishment, which would include the [municipality’s] anticipated and actual expenses resulting from the operation of the establishment in the community,” and include the municipality’s response or an attestation that the municipality did not respond.

At least one MRE has questioned its Host Community’s continued collection of the statutorily permitted community impact fees and is seeking support for its position in the state court.

A lawsuit filed in the Essex Superior Court on April 2, 2021 against the City of Haverhill (“City”) and its mayor is challenging the community impact fees.² According to the complaint, in December 2018, Haverhill Stem, LLC (“Haverhill Stem”) entered an HCA with the City, the terms of which included a community impact fee. In late May 2020, after receiving from the CCC its “final” license order to commence operations, Haverhill Stem opened for business.³ In late July 2020, as part of its annual license renewal process⁴, Haverhill Stem made a written request to the City for documentation supporting the community impact fee. After the City failed to respond to that and a second request, the CCC set a February 21 deadline for Haverhill Stem to file the City’s response. On March 1, Haverhill Stem received the City’s response, which stated: “We do not at this time have specific documentation to provide you with.... We believe that retail marijuana stores have caused us to have a substantial increase in our costs across a spectrum of municipal departments.” It referenced “an increase in need for drug abuse and mental health services, in both our community and, more specifically, in our schools, as well as an increase in domestic issues,” but failed to specify any costs or cost increases. The City has billed Haverhill Stem for a second year’s community impact fee.

¹ This fee is in addition to the local 3% sales tax imposed on the MRE’s gross sales.

² *Haverhill Stem, LLC v. James J. Fiorentini, Mayor and City of Haverhill*, Superior Court docket no. 2177CV00375.

³ Haverhill Stem’s ability to open was delayed by the Commonwealth’s State of Emergency restrictions related to the COVID-19 pandemic.

⁴ Haverhill Stem’s license renewal was due in October 2020.

In its suit, Haverhill Stem seeks damages for breach of contract and breach of the covenant of good faith and fair dealing, and also requests that the court:

1. Order the City to provide the required documentation substantiating the alleged costs;
2. Order the City to deposit Haverhill Stem's payment with the court until it provides the documentation; and
3. Declare that in the absence of proof of the alleged costs, the City cannot recover any community impact fee from Haverhill Stem, and Haverhill Stem owes no fee.

The Haverhill Stem lawsuit may be the first to directly challenge municipalities' collection of these statutorily permitted "community impact fees" where there is little or no documentation demonstrating that the presence of an MRE has actually resulted in increased costs to the community. Others have also questioned the validity or need of the fees being imposed in HCAs.⁵ In 2019, the United States Attorney for Massachusetts opened a grand jury investigation into the collection of HCA fees and issued subpoenas to at least six municipalities for their community host agreements, related documentation and communications.⁶ Having reportedly seen few negative effects in its experience with recreational marijuana sales within its community, the City of Northampton no longer charges or collects the community impact fees.⁷ In early February 2021, the Massachusetts Supreme Judicial Court heard arguments in an appeal brought by an MRE applicant, Medieri, Inc., against the City of Salem and its mayor which, in part, raised the issue of fees other than community access fees imposed in HCAs. Read our previous client alert on this topic [here](#).

Also of significance, a number of bills regarding community impact fees were introduced in the Massachusetts Senate in mid-February 2021. All seem to reflect concerns about the fees being imposed by municipalities and have been referred to the Senate's cannabis committee. One would require: that municipalities document the annual "community impact" costs by March 15 of the succeeding year; that those costs be subject to audit by an independent CPA; and the payment of a rebate to the MRE if the fee collected exceeds the costs of its operations imposed on the municipality. That bill also authorizes civil actions if the municipality fails to document its costs.⁸ Another bill provides, in part, that the CCC issue regulations governing HCAs⁹, and may review, regulate and enforce HCAs. A third bill would substantially re-write the statute's "local control" provisions, and would, in part: set the community impact fee at no more than 3% of gross annual sales, effective or renewable for no longer than five years beginning on the date the MRE commences operations; require that any additional "monetary payments, in kind contributions and charitable contributions" be encompassed in the community impact fee; and make unenforceable any other financial obligation as a factor considered in or as a condition of the HCA. That bill provides that the municipality document any costs imposed by March 15 of the succeeding year, which document would be a public record and transmitted to the licensee and the CCC, and would require that the CCC promulgate regulations to carry out these provisions.¹⁰ In contrast, a fourth bill is more favorable to municipalities and would make HCAs valid for a minimum of five years, and allow collection of community impact fees for longer than five years.¹¹

⁵ In many HCAs, in addition to the community impact fees, the MRE is also required to pay other fees based on a percentage of gross annual sales and/or to make annual charitable contributions to municipality-approved organizations.

⁶ See Boston Globe, 11/04/19, "Federal grand jury Investigating municipal marijuana contracts."

⁷ See Boston Globe, 1/25/21, "Northampton drops controversial fees on marijuana companies." Northampton was one of the municipalities that received federal grand jury subpoenas in 2019.

⁸ 2021 Massachusetts Senate Bill no. 68, "An Act encouraging transparency in host community agreements."

⁹ 2021 Massachusetts Senate Bill no. 67, "An Act relative to host community agreements."

In the coming months, there may be more challenges in the courts and legislature action regarding these community impact fees and other fees included in HCAs. Again, stay tuned!



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¹⁰ 2021 Massachusetts Senate Bill no, 72, "An Act to ensure equitable community host agreements and increase small business opportunity"

¹¹ 2021 Massachusetts Senate Bill no. 77, "An Act to support partnerships between the cannabis industry and municipalities."