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An Analysis of Cannabis Host Community Agreements in the Commonwealth of Massachusetts

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EXECUTIVE SUMMARY

Sponsored by the Massachusetts Cannabis Business Association, this report reflects the research of Dr. Jeffrey Moyer of the McCormack Graduate School of Policy and Global Studies at the University of Massachusetts Boston, who independently refined research questions and designed and conducted analysis of Host Community Agreements between Massachusetts municipal governments and cannabis business operators.

The subject of legal and media scrutiny, implementation of the Host Community Agreements set forth in the November 2016 legalization of cannabis as amended by the Legislature in Massachusetts continue to reflect disagreement about the interpretation of certain provisions of the law and the regulatory role of the Cannabis Control Commission. To better understand the variance, this study conducted a systemic coding review of 460 Host Community Agreements (covering over 85 percent of issued licenses obtained by public records request to 149 Commonwealth municipalities).

The review revealed particular variation in descriptions of community impacts of cannabis businesses and the means by which agreements attempted to control for these impacts. A significant proportion of the agreements provided financial incentives for host communities over the legal cap, amounting to an excess of \$2.46 million (though some payments precluded calculation), whether through reimbursements, local charity donations, so-called “community benefit payments,” or donations of employee time to education efforts. A further records request to towns that had already collected funds showed that few municipalities had any plan for spending them, and those plans that were provided did not align with the guidance of the Cannabis Control Commission. Many of the agreements obligate operators to make payments toward poorly defined or inadequately operationalized impacts, with little provision for review or accountability.

With Massachusetts cannabis retail sales over \$393 million in the first year (between 11/20/18 and 11/20/19), localities are poised to benefit from nearly \$12 million in revenue, for which there is little oversight. We recommend that the Legislature promptly authorize the Cannabis Control Commission to issue regulations on Host Community Agreements. We recommend that the Cannabis Control Commission establish standards for what agreements can pay for as well as a more robust and transparent accounting structure to track funds, including a provision allowing the Commission to void unlawful portions of agreements or to decline license renewal to operators under agreements that include unlawful financial incentives—to include “voluntary” donations to local groups and reimbursements for costs beyond the impact fee. We also strongly recommend that municipalities assess their Host Community Agreements in compliance with state law and guidelines issued by the Cannabis Control Commission.

INTRODUCTION

This report is the product of a collaboration between the Massachusetts Cannabis Business Association (MassCBA) and the McCormack Graduate School of Policy and Global Studies at the University of Massachusetts Boston. MassCBA approached McCormack in late 2019 to learn more about existing Host Community Agreements (HCAs) in Massachusetts and Dr. Jeffrey Moyer was enlisted to expand his recent doctoral research on the implementation of cannabis legalization in the Commonwealth.

Dr. Moyer conducted a thorough analysis of all HCAs acquired in Spring 2020 and of budget records, provided by municipalities, which detail the payments made under the agreements. The goal of the analysis was to document municipalities' approaches to cannabis business licensing and HCA adoption, focusing on mandatory fees and payments. The Cannabis Control Commission (CCC or Commission) has adopted guidance on the structure and implementation of HCAs, most recently in January 2020. Despite this effort, a great deal of perceived variance persists among municipality officials, cannabis business operators, and members of the public. We hope with this analysis to bring additional clarity to the topic and to provide a basis for legislative and regulatory changes to better facilitate a transparent, fair, and safe market for cannabis in Massachusetts.

While MassCBA initiated and sponsored this research, the analysis itself was designed and conducted by Dr. Moyer; thus, all conclusions should be read as separate and distinct from any public or private policy goals of MassCBA. Dr. Moyer's previous and ongoing research into the implementation of the Marijuana Regulation and Taxation Act informed this analysis and is cited where relevant.

Dr. Moyer and MassCBA owe a debt of gratitude to the research unit of the CCC, including Dr. Julie Johnson, whose efforts to fulfill the Legislature's research agenda and to release Commission data reliably and punctually are greatly appreciated.

We also owe thanks to Washington and Lee University research assistant Aidan Long for his contributions to the analytical and logistical elements of this project, which included tracking responses and coding agreements. Dr. Moyer would also like to thank editor MacKenzie Dietz for copyediting and formatting the final report.

The legal analysis and conclusions of this report were reviewed by attorney and cannabis HCA expert Jody Lehrer. Her feedback and insights have informed various aspects of the final report.

LEGAL CONTEXT

This section will outline the legal context and known facts surrounding HCAs and municipal cannabis licensing. We have relied on the Commission's report on HCAs from March 2019 for much of this, though we seek to build on more recent developments and reporting on this topic and set the basis for our contributions in this report.

On November 8, 2016, citizens of Massachusetts voted in favor of ballot question four, the Marijuana Regulation and Taxation Act (Question 4), later enacted as Chapter 334 of the Acts of 2016. Question 4 outlined a legal and regulated recreational cannabis market that restricted municipal power, limited the imposition of additional fees and taxes, and prohibited the delay of final licensing by the newly created CCC. However, the Legislature delayed the implementation of much of the initiative until July 2017, when House Bill 3818 (H.3818) passed. The bill substantially revised the voter-passed initiative, expanding the role of municipalities in the regulatory process.

The Commission's 2019 report outlines the origin of the language regarding HCAs in H.3818. It notes that much of the text originated in the House version of the bill that went to conference committee in the summer of 2017 and traces the language to the Commonwealth's 2012 effort to legalize gaming. The gaming bill did not permit the Gaming Commission authority to review agreements, but rather empowered municipal voters to review and potentially reject any location in their town where a gaming establishment might seek to open. Similarly, H.3818 lacks an explicit mandate that the CCC review HCAs, requiring only that the agreements be signed as part of granting a final license to each cannabis establishment.

A 2013 report by the Collins Center at the University of Massachusetts, Boston on development agreements for the Massachusetts Gaming Commission makes clear the purpose and intended design for these agreements, characterizing them as follows: "part vision statement, part road map, and part contract, a development agreement is more than just a legal document, it is arguably the most important and complex relationship a municipality and property owner can enter into." The report shows that gaming agreements often contained elements like business descriptions, key facts agreed upon by both parties, agreements on property usage and utilities payments, and developer commitments like hiring local workers. At the same time, the report notes that the gaming establishments for which the report was commissioned would have unique impacts and needs and encouraged readers to note certain distinctions. Host Community Agreements for cannabis establishments, too, have taken on a particular character relevant to their usage; we will examine this in a later section of this report.

While H.3818 states that municipalities can only ask for 3 percent of gross revenues as part of the so-called "community impact" fee, the Commission's March 2019 report and similar updates released by the agency indicate that municipalities have some latitude under state law to seek additional payments from licensees as part of these agreements. Despite these payments sometimes being labeled as donations, for example, the Division of Local Services has taken the position that any payments made under these agreements must be deposited into the municipality's general fund for later appropriation. As cited in the Commission's 2019 analysis, the 2018 Local Finance Opinion states:

We understand that some of these agreements have characterized all or some of the payments as gifts or gifts in the nature of trusts. However, a payment made by a

private party to a municipality in connection with a regulated activity, contract, or other municipal action is not a gift, donation, or grant within the meaning of and for the purposes of G.L. c. 44, § 53A. Therefore, it may not be accounted for in a separate account and spent without appropriation. These payments lack the donative intent that is an essential characteristic of the genuine gift required by that statute. A gift is ordinarily defined as a voluntary payment of money or transfer of property made without consideration. Although a private party's decision to engage in a regulated activity or contract with a municipality may be one of choice, it is doing so with the expectation of receiving valuable consideration in return, i.e., a privilege or benefit, or some municipal action or authorization. **In this case, the execution of a host agreement is a condition precedent to being able to operate or continue to operate as a licensed marijuana establishment or registered medical marijuana treatment center. It is doubtful that any payments the establishment or treatment center agree to make are for a purpose other than to obtain the necessary host agreement.**

The Commission has taken the position that it lacks the authority to review HCAs, though this position has received some pushback from legislators. In response to a letter from the Legislative Joint Committee on Marijuana Policy in June 2018, the Commission voted 4-1 to defer any examination of the agreements and instead referred the question for further examination, an inquiry which later produced the Commission's 2019 report. However, the report did not settle the matter. State Representative Mark Cusack wrote a follow-up letter in June 2019 reiterating his belief that the Legislature had properly granted the Commission authority to review. Commission Chairman Steven Hoffman responded soon thereafter to indicate that the Commission's position had not changed. He noted a recent ruling in *Mederi v. City of Salem, et al.* where the Superior Court had likewise held that the Commission could not be sued for lack of action on this issue. The relevant statute governing HCAs in the Commonwealth can be found in Chapter 94G:

(d) 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 percent 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.

The interpretation of “reasonably related” is a main point of disagreement in the debate over HCAs and the impact fees they contain. This report seeks to provide clarity on how towns and cities have been implementing this clause. We also note the next section of the Commission’s recommendations, which gives guidance that should provide local governments a clear directive to make transparent the expenses they are imposing on cannabis establishments in their community. As will be described later, many localities have insufficient public records of the money they have collected.

Subsequent events and media reporting have shed additional light on the nature of the local licensing process in the Commonwealth, calling into question the trust that the Legislature placed in municipal officials to act appropriately. In September 2019, the mayor of Fall River was arrested on charges of extorting cash payments and other items of value from prospective licensees. Subsequent media reporting indicated that federal prosecutors out of the U.S. Attorney’s Office, based in Boston, were examining agreements from other towns. In early 2020, WGBH news reported that towns like New Bedford had made license applicants feel pressured into making donations and described the impact of this additional regulation as undermining the Commission’s aspirations for social equity in the new market.

In this context, the Commission released an updated guidance on negotiating HCAs in January 2020. This guidance makes clear that the Commission does not believe it has the authority to regulate HCAs but advises that municipal officials should seek to be transparent and act in good faith, noting the additional scrutiny from state and federal officials. This guidance explicitly allows for payments in excess of the 3 percent cap but advises that these should be collected consistent with state law. For the community impact fee, costs should be proportional to actual expenses incurred. The guidance warns against using revenue from these impact fees for budget planning. This document further lists the following as “costs that may be reasonably included [as part of the] 3 percent”:

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

Beyond this, the guidance only underlines that any costs should be documented as public record and that licensees should obtain this documentation as part of their renewal applications. The Commission did insert language into the 2020 update suggesting that cannabis business operators and towns should update their agreements after some time to reflect actual costs incurred.

An early 2019 presentation from KP Law by attorney Katherine Laughman relating to the adoption of local licensing schemes to regulate cannabis operations in addition to zoning laws and HCAs gives localities similar guidance, laying out two potential options for municipalities looking to license cannabis

business operators: (1) publish a list of criteria by which applications will be judged on an ongoing basis or (2) issue a Request for Proposals through which potential operators can apply for a license in a bidding process. Potential criteria for selection included adequate compliance and control systems, mitigation of local pollution and traffic, and financial commitment to the locality. A further slide on the impact fee specifically outlines the legal limits in the statute and suggests specific provisions for HCAs such as a defined fee structure, late penalties, auditing, and a duration limitation. The presentation specifically recommends that localities track costs in order to justify the 3 percent over a longer time period.

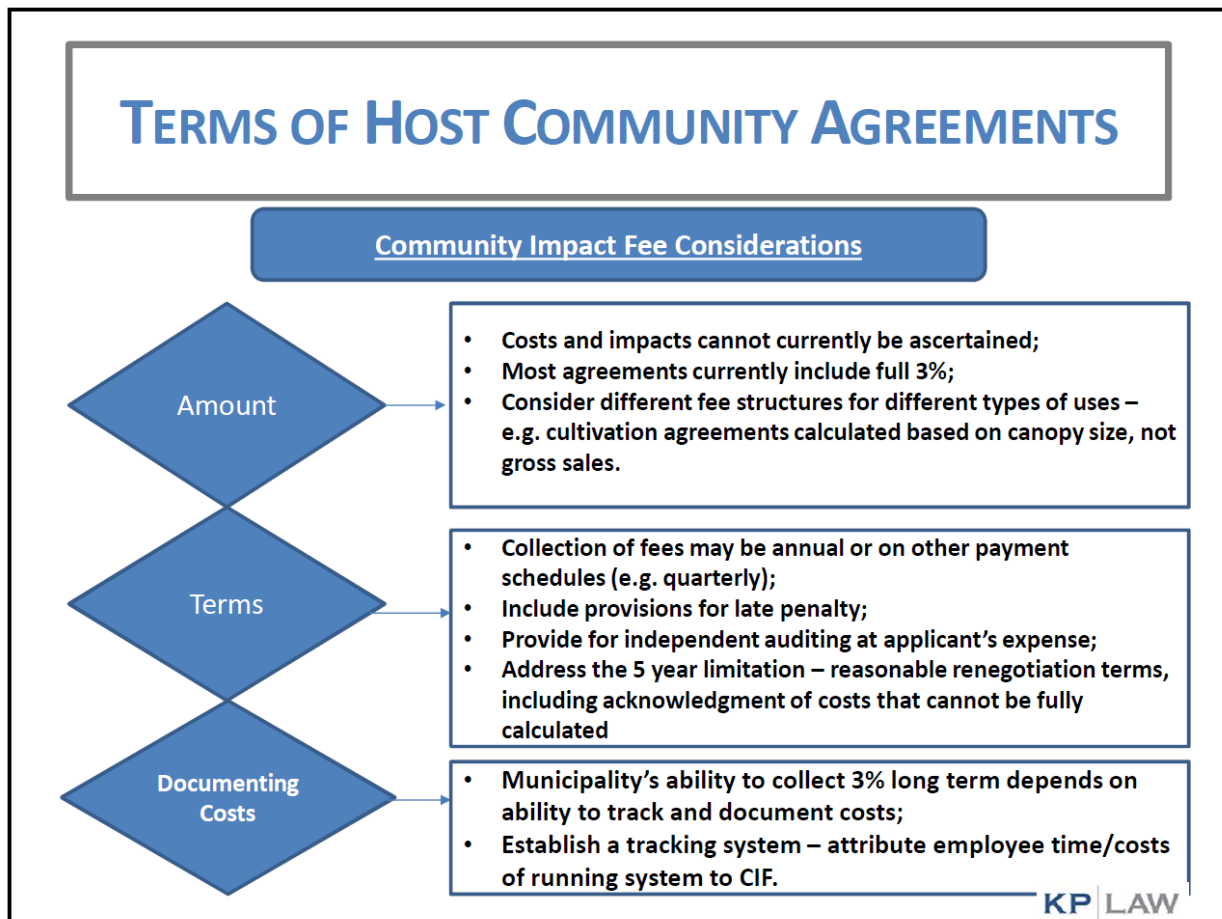


Figure 1: Terms of Host Community Agreements

The public perception around HCAs has been that towns have been able to exact key concessions from cannabis business operators due to a power imbalance caused by competition among potential licensees for a limited number of local licenses—often against a number of other applicants. Further, the still uncertain nature of the future of legal cannabis and the perceived “green rush” that many state and local leaders perceive when considering cannabis in their jurisdictions may incentivize local leaders to demand a number of specific provisions that weight the relationship to their benefit. With this said, the market for new cannabis business operators has proven rocky and dangerous in other states, with operators driven out of business soon after the initial excitement of legalization passed. Many operators have built their business plans and sold equity based on assumptions about their ability to sell their

product at an inflated price or volume, which can lead to a rapid boom and bust after recreational sales begin.

Massachusetts sought to learn from the examples of previous states like Oregon where the initial boom caused a glut of cannabis operators in the market, leading to fears that financially desperate operators might sell their product illicitly to recoup their investments. Since Commissioners set upper production limits on supply, the gradual opening of cannabis businesses in the Commonwealth has perhaps circumvented the issues of an intense rush of business. Conversely, this slow opening, combined with closures during the coronavirus crisis, may instead lead to illicit market resilience, threatening the viability of the legal market.

DATA/METHODS

Research methods for this project were designed to capture a more complete picture of municipalities' understanding of their legal responsibilities surrounding Host Community Agreements, the funds they sought to collect under the agreements, and their justifications for doing so.

Initially, to gain the broadest possible data, we hoped to gather information from both municipalities and businesses; we drafted Google Forms targeted at both before we found there were different legal mechanisms for each. Our requests to municipalities would be framed as public records requests under the Commonwealth's Right To Know laws. The statute governing HCAs explicitly includes as public record the documentation of spending of funds collected under the agreements. Cannabis businesses, on the other hand, are under no obligation to share their HCAs. We narrowed our focus to municipality records.

Using Commission data on licensing issues, we identified 138 of the Commonwealth's 351 municipalities as likely to have HCAs and the relevant financial records. We prepared a request to be sent to the designated Records Access Officers (RAOs) as identified by the Secretary of the Commonwealth's Public Records Division. Requests to RAOs were emailed in batches and responses were tracked via spreadsheet. In some cases, alternate contacts were identified when the indicated RAO did not respond to the initial request. While the email message included a Google Forms link, few used this response method, responding directly to our email instead.

Massachusetts normally gives public bodies including towns and cities 10 business days to respond to records requests. However, this timeline and hence our research was dramatically shaped by the ongoing COVID-19 public health crisis. Our questions and methodology had been determined by the time the crisis began and we sent out the first batch of requests on March 1. However, subsequent batches and follow-up emails were sent after Governor Baker declared a public health emergency in mid-March. The research team took care to obtain a full response from all municipalities, but the crisis, perhaps in combination with emerging federal legal activity, may have caused some towns not to respond. As a result, it took over three months to gather responses from 90 percent of the targeted municipalities. Despite the delay, we are confident we gathered HCAs representing nearly all the cannabis business operators identified by the Commission as of April 2020. We have no reason to suspect that the agreements we were unable to obtain contain a degree of variety relevant to our coding questions.

AGREEMENT CODING

Our analysis focused primarily on the coding and classification of each HCA we obtained. Research questions were identified by the research sponsor, refined by the research team into a subset of more specific questions, and sent out and coded using a Google Form. Given the wide variation in the organization of the agreements, open-ended questions were developed to identify common elements:

- What license type(s) did the agreement cover?
- What hours of operation did the agreement permit the licensee?
- Did the agreement regulate the signage the licensee could use?
- What security measures did the agreement mandate?
- What payments did the agreement mandate for the licensee?

- Was this a percentage of gross revenue or a flat amount?
- How was this fee defined? Was the potential “impact” on the municipality defined in any way?
- Were there any other donations or fees outlined in the agreement?
- Was there a commitment on behalf of the licensee to hire local residents or vendors?
- Could the agreement be reopened if the licensee signed another more favorable HCA elsewhere?
- Are there any other notable elements to these agreements?
- How similar is the language between executed agreements?
 - Do agreements align with the Commission’s guidance?

The initial part of the analysis incorporated an inter-coder reliability validation, with the research team individually coding at least 20 agreements and reporting any classification issues. The bulk of the agreements were then coded by one member of the team, with regular check-ins to identify classification challenges and ensure the Google Form correctly captured the variation the research team found across agreements. The initial batch of agreements was used to generate the list of impacts municipalities cited as well as the range of payments the agreements called for. Several more common options were added later in the coding process after being identified in team meetings. The final version of the coding form can be found in Appendix C.

One challenge encountered in the analysis was that many HCAs covered more than one type of license, while the agency data available from the Commission listed each type of license and operator separately. The list we acquired from the Commission consisted of 752 possible licenses. Of these licenses, we were able to match at least 670 to an agreement acquired via public records request from a locality. We found these 670 licenses out to 460 potential agreements that could be coded with our Google Form.

BUDGET ANALYSIS

While the initial research project sought to gain a greater understanding of how payments made under these agreements were being spent by municipalities, our initial data collection demonstrated that this would be difficult due to the lack of responsiveness from many of the towns. As a result, our analysis reflects the plans as outlined by the executed agreements, and we were unable to provide a representative sample of how towns are using these funds as a function of the total universe of money potentially available to towns. We estimated this amount as nearly \$12 million, though based on our review of the contracts included below, this number would certainly be less.

Many towns indicated that they had no specific plan to spend the funds collected under the agreement and were routing the payments they did receive to their general funds as advised by the Local Finance Opinion. Massachusetts public records law does not require records access officials to answer specific queries, nor does it obligate them to create records in response to requests. It is likely that towns have discussed their plans to spend this money on an informal basis, but early licensee operations and de-prioritization during the public health crisis are likely to have caused a relative lack of documentation. Still, these challenges also demonstrate the need for more disclosure and transparency around local spending, which we have incorporated into our recommendations.

We did receive a broader set of records from a limited set of municipalities including Athol, Brockton, Brookline, Pittsfield, and Northampton. Our analysis in this report reflects the findings from these

towns, but given the scarcity of public records subject to mandatory disclosure on this matter, we believe that this reflects the lack of consensus across the Commonwealth on how to spend these funds. This is explored further in the conclusions section.

FINDINGS

This section will review various aspects of the Host Community Agreements as they were coded for this report. We have summarized the entire population of agreements as our coding permitted and have selected examples of different types of language to demonstrate the provisions we found. In each case, we have given an excerpt of the relevant language in the provided agreement. For each HCA we excerpted here, we have provided a link the full agreement in the appendices of this report. All charts reporting a percentage are out of all actual agreements coded (460), not license types as discussed above.

We found that some towns were combining different license types into one master HCA with each licensee. Other towns split each license category and adopted an HCA for each. Of the agreements reviewed, 60 percent covered retail operations, 41 percent covered cultivation, 32 percent covered product manufacturing, 10 percent covered some form of medical operation, with all other license categories including microbusinesses, transportation, and independent laboratories below 3 percent. A full display of all categories can be seen in the below chart.

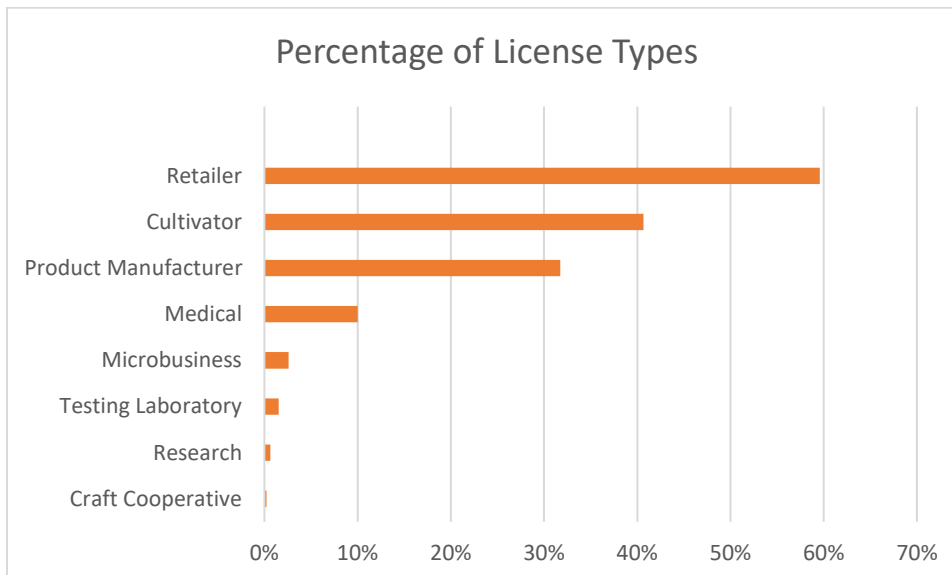


Figure 2: Percentage of License Types

IMPACT FEES: DEFINITION, TERMS

Our review revealed a great variety in towns' definitions of the community impacts of cannabis licensees. These agreements assumed that the impacts on the local community would be negative, though there has been little to no effort to document this. Some categories were relatively common—at least half mentioned some combination of roads, inspectional services, law enforcement, permitting, and public health, while at least a quarter mentioned further impacts to other infrastructure, fire protection, administrative services, and addiction services. Several unique categories can be seen in the next figure, and some examples of this language will be further shown below.

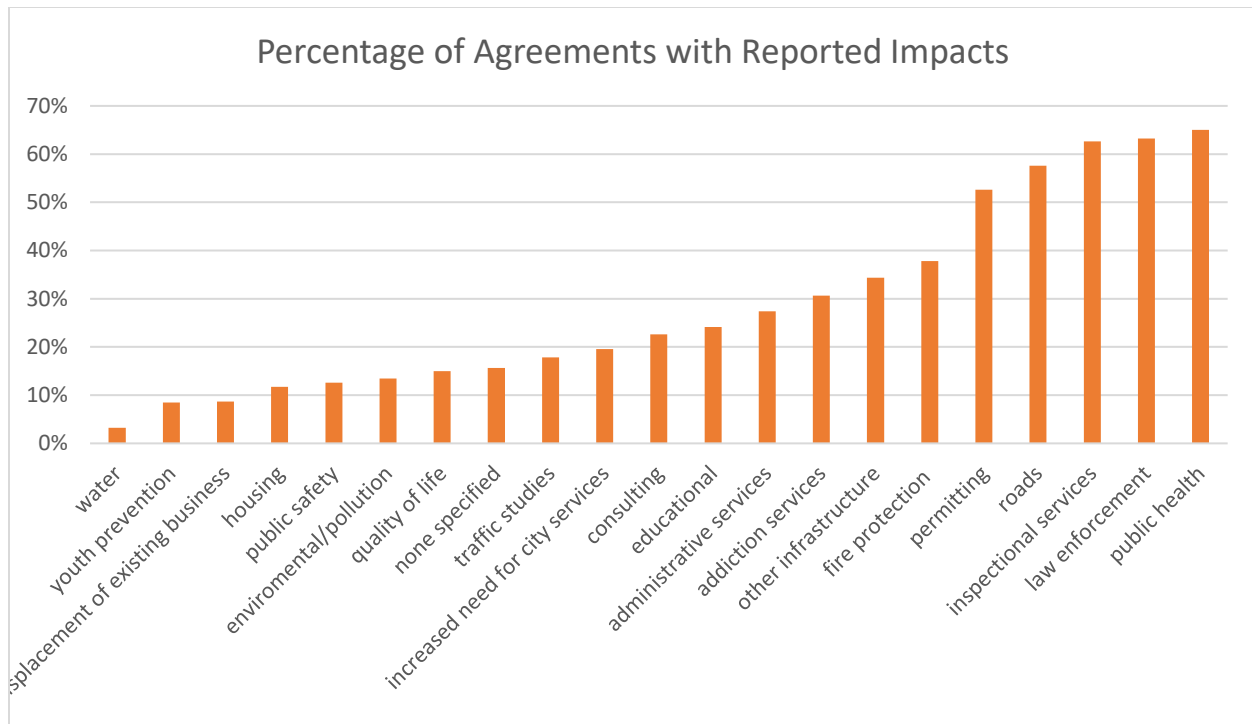


Figure 3: Percentage of Agreements with Reported Impacts

A typical example of impacts listed can be found in this agreement between the city of Holyoke and Buudda Brothers, which was shared by at least 17 other agreements, including others from Holyoke and the town of Taunton:

1. **Impact.** The purpose of this Agreement is to assist the CITY in addressing Community Impacts directly proportional and reasonably related to the OPERATOR. “Community impacts” means, collectively, the following potential and actual impacts to the CITY directly related to or resulting from the construction and operation of the Establishment such as: (i) increased use of CITY services; (ii) increased use of CITY infrastructure; (iii) the need for additional CITY infrastructure, employees and equipment; (iv) increased traffic and traffic congestion; (v) increased air, noise, light and water pollution; (vi) issues related to public safety and addictive behavior; (vii) loss of CITY revenue from displacement of current businesses; (viii) issues related to education and housing; (ix) quality of life; and (x) costs related to mitigating other impacts to the CITY and its residents.

Another example of a list of impacts is found in an agreement between the City of Fitchburg and Garden Remedies. This language was also shared by at least another 17 agreements, including examples from Leicester and Worcester:

The parties agree that siting this and similar facilities can have costs and impacts including, but not limited to, a) the need to promote a positive perception of the City to other residents, visitors and businesses, b) an increased impact on the health and security of its Citizens, c) an increased impact on the roads and public services of the

City, d) increased administrative and compliance costs, e) increased regulatory, police and inspectional services.

While the overwhelming majority of the agreements did include specific impacts, at least 80 were identified as specifying no specific impacts. An example of this language can be found in an agreement between the town of New Bedford and Southwest Apothecaries:

WHEREAS, the Company desires to provide community impact fee payments to the City pursuant to M.G.L. c. 94G, § 3(d), that shall be reasonably related to the costs imposed upon the City by Company's operations in the City.

As seen in other areas of these agreements, the language used was broad and arguably vague, allowing a locality nearly limitless discretion to spend the funds in any way they chose. An example of this provision can be found in the Holyoke-Buudda Brothers agreement cited above:

3. Impact Fund. The CITY shall use the above-referenced payments in its sole discretion consistent with the purpose of this Agreement and in accordance with G.L. c. 94G, § 3.

Many agreements went even further, with the operator waiving any right to contest the locality's spending of funds collected under an HCA. While we did not specifically account for this provision in our analysis, language similar to this agreement between the town of Nantucket and operator ACK Natural can be found in a number of other reviewed cases:

4. Pursuant to M.G.L. c. 94G, §3(d), a "community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment..." Notwithstanding the foregoing, the Parties hereby acknowledge the difficulty in computing actual Town costs and agree that impacts may result in municipal budgetary increases that cannot be separately identified or precisely quantified. Consequently, the Company agrees that the payments due under this Agreement are reasonably related to Town costs and waives any claims to the contrary.

IMPACT FEES AMOUNTS

Most significantly, we found that over three-fourths (354) of the contracts we examined specified an impact fee percentage, while other agreements had either/or provisions or specified a whole dollar amount. Of those agreements that specified a percentage at all (406), we found that over nine-tenths were pegged at the 3 percent limit specified in state law. A small number included provisions that could result in an impact fee higher than 3 percent, typically if the operator failed to meet an expected revenue goal. The below chart shows the distributions of this data, and some examples of this language will be explored here.

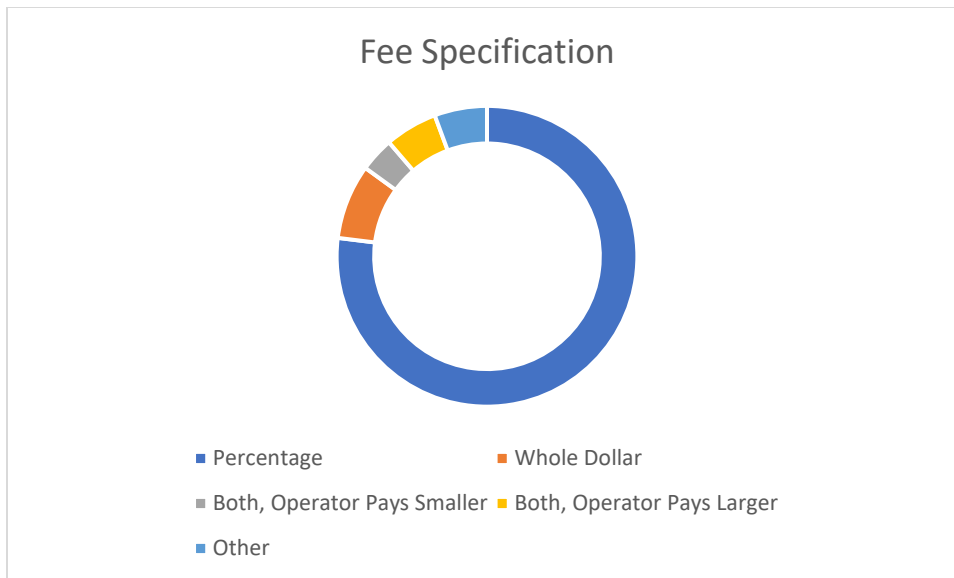


Figure 4: Share of Agreements with Fee Specifications

A typical impact fee was outlined early in the agreement, and was specified as a percentage of gross sales, production, or another manner as relevant to the type of operator. In some cases where the agreement covered multiple types of activity, the agreement would break individual rates for each licensed activity. An example of this can be found in an agreement between the town of Sheffield and Ten-Ten LLC:

Gross retail sales of Usable Marijuana (as that term is defined by 935 CMR 500.002) of the marijuana retailer establishment at 775 North Main Street to consumers: Three Percent (3%)
 Gross Wholesales of Usable Marijuana of Marijuana Establishments (as that term is defined by 935 CMR 500.002) on the Premises to Marijuana Establishments not owned by Company: One and a Half Percent (1.5%)

The agreements commonly specified that payments were to be made at regular intervals, usually yearly, quarterly, or in some cases, monthly. Operators had to supply the locality with accounting and supporting paperwork to justify the calculation of the impact fee, if requested. However, in nearly all cases, municipalities did not commit to/were not required to provide licensed operators with any account of the funds they collected.

As mentioned above, in a small number of cases the specification of the impact fee was made in whole dollars, or as the higher of two amounts that could lead to the operator paying a greater amount than the legally allowed 3 percent. An example of this language can be found in an agreement between the town of Marshfield and operator Frozen 4 Corporation:

- (1) Each year, for a term of five years, the Company shall pay a Host Community Fee to the Town the purpose of addressing such quantifiable and unquantifiable impacts of the Company's operation:

- (a) for the first year of operation, Two Hundred Fifty Thousand Dollars (\$250,000.00) or three (3%) percent of the gross sales of the Facility, whichever is greater

This agreement also had a provision that established a minimum impact fee payment that Frozen 4 was responsible for:

licenses to operate as a Marijuana Retailer within one (1) week of obtaining same. In no event shall the biannual payments be less than One Hundred Twenty-Five Thousand and 00/100 (\$125,000.00) Dollars.

ADDITIONAL PAYMENTS

We also accounted for legal provisions that discussed material contributions operators might make to the town beyond the specified impact fee. Some of these contributions are otherwise completely legal, while others push the envelope and are worthy of further scrutiny. To capture the true variation in our sample, we attempted to account for all the potential contributions explicitly mentioned in the agreement, though in some cases, such as local taxes, the operator can be presumed to be making those payments regardless of whether the agreement mentions them (over 65 percent of agreements mentioned either property taxes or local taxes more generally). Nearly half of the agreements reviewed provided that the operator would pay a permit or connection fee for local utilities, while one-fifth specified that the operator would be responsible for facility consulting fees.

Most importantly, nearly 40 percent of agreements required that the operator pay a donation to a local non-profit organization, while around 20 percent mandated that support of local education efforts on substance-abuse prevention. Notably, while some agreements specified the non-profit, others delineated this donation as a more general “community benefit” and gave the town discretion on where it should go. Likewise, a large proportion of those agreements which specified a donation also required the maximum possible impact fee. A much smaller number specified other specific contributions, including legal defense fees, police officer training, and public meeting costs.

In addition to the coding of agreements specified in Appendix C, we compiled a list of all additional annual donations that were specified over 167 agreements. These donations varied widely- from \$720 in an agreement between the town of Ashby and operator Hemp Holistics to a high of \$110,000 in an agreement between the town of Salem and CTDW, LLC (over several different non-profits). While a limited number of agreements had donations, which could not be calculated from available data (such as a percentage of sales or gross revenue), the total of those that were specified was over \$2,446,000 in one year. A total of 61 towns had at least some agreements that called for these donations, a list of which can be found in Appendix F. The top six towns had a total of \$998,000 in contractual donations, including the town of Salem with \$250,000 and Chelsea with \$200,000, as well as the towns of Northampton, New Bedford, Chicopee, and West Boylston.

An example of a specified payment that would arguably go beyond that which is specified in the law can be found in an agreement between the town of Orange and TDMA Orange LLC. This agreement specifies the impact fee as follows:

- a. Company shall annually pay Annual Community Impact Fee in an amount equal to three percent (3%) of the wholesale value of marketable product produced by the cultivation and/or manufacturing operations at the Establishment which are not sold directly to consumers on-site but are distributed to other off-site marijuana establishments. Wholesale Value shall be determined by arms-length wholesale sales made by the Establishment during the year and shall include all marijuana, marijuana infused products, paraphernalia and any other products produced and sold by the Establishment.

After outlining the impact fee, the agreement later includes a provision requiring TDMA to make an annual charitable contribution at the town's discretion:

6. Annual Charitable/Non-Profit Contributions

The Company, in addition to any funds specified herein, shall contribute, upon licensing, to the Town of Orange a one-time contribution of \$15,000, for the purpose of Community Development to be used at the Town's discretion.

An agreement between the town of Winchendon and operator Jolly Green, Inc. contains a required donation to a specific non-profit, after also specifying an impact fee of 3 percent:

C. Annual Charitable/Non-Profit Contributions

The Company, in addition to any funds specified herein, shall annually contribute the sum of not less than \$5,000.00 to the Eugene M. Connor Post 193 American Legion, 295 School St. Winchendon MA 01475. The Annual Charitable Non/Profit [sic] Contribution shall be made quarterly beginning on the first anniversary following the commencement of the operations and shall continue for the term of this Agreement. Proof of such contribution must be supplied to the town at the time of donation.

Meanwhile, an agreement between the town of Newton and operator Cyprus Tree Management, Inc. also outlines a mandatory donation that increases every year, again on top of a 3 percent impact fee:

6. The Company, in addition to any funds specified herein, shall contribute to public charities or private non-profit entities in the City an amount not less than \$2,500.00 in the first year of this Agreement, and shall escalate five percent (5%) annually thereafter. Said charities shall be determined by the Company in its reasonable discretion.

In addition to specific monetary pledges, other agreements go so far as to specify a separate percentage request beyond the impact fee, usually called a "Community Benefit Payment" or similar. An example of this can be found in an agreement between the town of Lanesborough and operator Royal Hemp, LLC in which the language describes both an "impact fee" as well as a Community Benefit Payment:

In addition to the Annual Community Impact Fee, for as long as the Facility is in operation, the Company shall pay to the Town an Annual Community Benefit Payment in the sum of two percent (2%) of the gross wholesale value of marketable products produced by the product manufacturing operations at the Facility which are not sold

or transferred directly to any Company-owned or operated marijuana retail establishment(s) located within the Town, but are distributed for commercial sale at any other off-site marijuana establishments as follows:

Shortly after this provision, we found additional language that makes clear that these payments are considered beyond the scope of the impact fee, though the agreement is not clear on what statutory or other justification there is for these payments.

2. In no event shall the Annual Community Benefit Payments ever be decreased.

3. The parties hereby recognize and agree that the Annual Community Benefit Fee to be paid by the Company shall not be deemed an impact fee subject to the requirements or limitations set forth in G.L. c.94G, §3(d).

In addition to monetary donations, a number of other types of payments are specified in the agreements. In many, the agreement outlines the taxes that the operator will pay. An example can be found in an agreement between the town of Holliston and operator Mederi, Inc.:

6. **Local Taxes.** 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.

An interesting example of the problematic nature of the broadly defined impact fee and the tendency for these contracts to go beyond both the letter and spirit of the statute can be found in agreements where operators agree to pay for permitting, facility consulting, or inspections separately in the agreement, but the specification of the impact fee also seems to include potential additional demands on inspectional or facility consulting services. This could be seen as the town double-dipping by collecting an impact fee to cover these costs while separately reimbursing the town for this expense. An example can be found in an agreement between the town of Belchertown and operator Kalyx LLC. The agreement specifies a 3 percent impact fee payment which is ostensibly to cover the following impacts:

The Town anticipates that it will incur additional expenses and impacts on the Town's, [sic] law enforcement, inspectional services, and permitting and consulting services, as well as unforeseen impacts on the Town related to Kalyx operation of the Marijuana Establishment.

This same section includes a provision which obligates the town to use this impact fee to cover expenses related to these impacts:

3. The Town shall use the above referenced payments in its sole discretion but shall make a good faith effort to allocate said payments for road and other infrastructure systems, law enforcement, fire protection services, inspectional services, public health, and addiction services and permitting and consulting services, as well as unforeseen impacts upon the Town.

However, later in this same agreement under the heading “Additional Payments,” the town calls for the operator to separately reimburse for facility consulting expenses:

2. Facility Consulting Fees and Costs: Kalyx shall reimburse the Town for any and all reasonable and customary consulting costs and fees related to any land use applications concerning the Facility, negotiation of this and any other related agreements, and any review concerning the Facility, including planning, engineering, and any related reasonable disbursements at standard rates charged by the above-referenced consultants in relation to the Facility.

A later provision contains further overlap with the impacts cited earlier:

3. Other Costs: Kalyx shall reimburse the Town for the actual costs incurred by the Town in connection with holding public meetings not held in public buildings and forums not within the Town’s regularly scheduled public hearings and meetings, which are solely devoted to discussing the Facility. Kalyx shall also reimburse the Town for costs incurred reviewing the proposed Facility applications and related equipment and systems and for any and all reasonable and customary consulting costs and fees.

The above agreement also contains a provision we found in a limited number of agreements requiring the operator to pay for public meetings related to consideration of the license and location of their facility. By itself, this provision would likely be legal and consistent with similar municipal practices, but when combined with the tendency of these agreements to go beyond the statute in other ways, it is more concerning.

Media reporting from 2019 on cannabis-funded police details in the city of Northampton also demonstrates this disparity. Reporting from the Hampshire Gazette showed that city police officers made over \$350,000 from police details operator NETA, while the town collected \$35,000 for purchase of a police cruiser and over \$700,000 in payments from excise taxes and the impact fee arranged under the HCA. This agreement specifies the impact fee as covering the following items:

The City anticipates that, as a result of the Company’s operation of the Retail Establishment, the City will incur additional expenses and impacts upon its road system, law enforcement, inspectional services, permitting services, administrative services, and public health services, in addition to potential additional unforeseen impacts upon the City.

The agreement, like most others, calls for a 3 percent impact fee and also states that NETA will contribute \$10,000 and staff time to local prevention efforts. As one of the original medical operators in Massachusetts and among the first to transition to serving both the medical and recreational markets, NETA has the capital needed to make it an attractive partner to the city. However, this extensive financial contribution could raise questions around equity and transparency. As the Hampshire Gazette notes, the size of the detail was later reduced after concerns about traffic were mitigated. While the NETA-funded detail was successful in capturing a local jewelry thief, there is little evidence to suggest these measures prevent crime related to the presence of cannabis establishments.

We found that many agreements call for operators to provide staff time or other forms of non-monetary support for local educational programming. An example of this provision can be found in an agreement between the town of Ware and operator Curaleaf Massachusetts, Inc:

Curaleaf MA agrees to provide no less than fifty (50) hours annually of community service activities including but not limited to: Town-sponsored educational programs on public health and drug abuse prevention, senior assistance, community cleanup, and veteran's assistance.

A limited number of agreements called for operators to reimburse the town for any legal expenses that the locality encountered as a result of the presence of the operator. In most cases when this provision appeared, the agreements specified that this cost would be in addition to any community impact fee. See this agreement between the town of Templeton and operator Tempest, Inc. for an example of this language:

C. Legal Defense Fees. Where applicable, the Company shall make the following Legal Defense Fee Payments. The Company agrees that any payments due from the Company to the Town under this Section shall not be reduced by the amount of any other payments, including the CIF Payment.

Our review also sought to capture the variation in other provisions of these agreements. While we determined many of these provisions to be beyond the scope of this analysis, focus was given to requirements beyond what other businesses of a similar size and nature might be subject to. Despite initial expectations, we found that less than 10 percent of the agreements explicitly covered operator signage or hours. On the other hand, the vast majority of agreements covered security requirements (87 percent) or included a commitment by the operator to select local employees and vendors (96 percent).

Nearly 40 percent of agreements contained a "reopener" clause. The function of these clauses was most often written in such a way as to reopen the agreement to negotiate if the operator signed a more favorable agreement with another locality. An example of such a provision can be found in an agreement between the town of West Stockbridge and operator Wiseacre Farm, Inc.:

In the event Wiseacre Farm or any controlling person enters into a Host Community Agreement for the Establishment with another municipality in the Commonwealth that contains financial terms resulting in payments of a Community Impact Fee or other payments totaling a higher percentage of gross sales for the same type of establishment than [sic] Wiseacre Farm agrees to provide the Town pursuant to this Agreement, then the parties shall reopen this Agreement and negotiate an amendment resulting in financial benefits to the Town equivalent or superior to those provided to the other municipality.

The agreement earlier had outlined a 3 percent impact fee but did not include any donations or additional payments. This example broadly defines the financial contribution ("payments totaling a higher percentage of gross sales") the operator is expected to pay to the locality, which suggests that if that operator were to sign another agreement with a "Community Benefit Payment" or another additional donation, Wiseacre would need to also give the same benefit to West Stockbridge.

Other agreements had similar but less broad reopener clauses in favor of the town or city. An example of this can be found in this agreement between the town of Greenfield and operator 15 Arch LLC, which specifically limits the financial payment review to the impact fee only:

It is expressly agreed by the Parties that in the event Operator executes a Host Community Agreement pursuant to G.L. c. 94G §3, with any other municipality that requires Operator to pay to said municipality a percentage community impact fee greater than the percentage Community Impact Payment provided in Paragraph 1 of this HCA, Operator shall pay to the City the same percentage community impact fee provided to said other municipality. If the City permits more than 2 additional retail ME's to locate in the City, the Annual Payment will decline to 2.5% beginning in the term year in which the 2 additional ME's open for business in the City.

The above also provides an example of agreements in which the operator served to potentially benefit instead when the locality signed a more favorable agreement with another operator. While our review did not distinguish between these two, this perhaps suggests that despite the common perception that localities were able to dominate the negotiation in many of these agreements, some towns may have felt some pressure to instead give their potential operators some leeway in order to foster stable relationships. We find that there are other instances where the reopener clauses sought to split the difference, as in this agreement between the town of Otis and operator Turning Leaf Centers, LLC:

In the event that the Company enters into a host community agreement for a Marijuana Establishment with another municipality in the Commonwealth of Massachusetts that contains terms that are superior to what the Company agrees to provide the Town pursuant to this Agreement, then the parties shall reopen this Agreement and negotiate an amendment resulting in benefits to the Town equivalent or superior to those provided to the other municipality.

In the event that the Town enters into a host community agreement for another Marijuana Establishment that contains terms that are more favorable to the other Marijuana Establishment than what is [sic] the Town agrees to accept pursuant to this Agreement, then the parties shall reopen this Agreement and negotiate an amendment resulting in benefits to the Company equivalent or superior to those provided to the other company.

There were limited examples of reopener clauses simply in the favor of the operator, containing only language similar to the second paragraph in the above agreement from Otis. This may demonstrate towns looking to attract and retain operators, or it may reflect a sense from local leaders that they are unlikely to get further benefits. We were not able to find any evidence that any of these agreements were ever re-opened to benefit either the operator or the town.

We also reviewed the agreements for compliance with the five-year impact fee expiration mandated by state law. Nearly 80 percent explicitly stated that the impact fee or the entire agreement expired after five years, while a small number provided for the fee to automatically renew. An example of this language can be found in this agreement between the town of Douglas and operator Z&T Inc.:

- (a) **Term.** The Term of this Agreement shall be five (5) years from the Effective Date (the “**Term**”), provided however, the provisions for payment under Section 1 herein, shall survive until the fifth payment has been remitted to the Town.

Both the statute and the Commission’s guidance expressly specify that towns and operators should plan on re-negotiating HCAs (and impact fees in particular) rather than simply letting them renew automatically. Our review of these agreements suggests that this guidance is largely being followed. However, 1 percent of agreements did include language that indicated that the provisions would automatically continue.

As indicated above, we coded agreements that mentioned some of the regular aspects of a business to try to determine the extent to which cannabis operators were being treated similar to retail businesses in other sectors. While relatively few agreements regulated either the signage or hours of the businesses, a large proportion did contain specific language relating to security. Most often, these provisions simply held that the operator would cooperate with local law enforcement, though some agreements did include security plans and specific provisions, as well as language describing anti-diversion efforts.

We also found that nearly all of the agreements contained a provision committing the operator to hire local employees and vendors. This suggests that local leaders strongly desire operators to benefit their town economically, though the wording gives little power to local officials to enforce these provisions. An example can be found in an agreement between the town of Shrewsbury and operator Prime Wellness Center:

7. Local Hiring: Except for senior management positions, the Operator commits to hiring local, qualified employees to the extent consistent with law. In addition to the direct hiring, the Operator will work in a good faith, legal and non-discriminatory manner to hire local vendors, suppliers, contractors, and builders from the Shrewsbury area where possible.

Another example between the town of Nantucket and operator ACK Natural, LLC is more specific:

To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company will make every effort in a legal and non-discriminatory manner to give priority to local businesses, suppliers, contractors, builders and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the Facility when such contractors and suppliers are properly qualified and price competitive and shall use good faith efforts to hire Town residents.

OTHER PROVISIONS

We took care to note unique provisions in these agreements and to report them here for full disclosure. The examples found in this section, it should be noted, were relatively rare among the entire sample of agreements.

One unique provision we found in agreements from the town of Wellfleet mandated that retail stores should stock inventory commonly used by residents over the age of 65, and that the store should give a

discount of 15 percent to these customers. An example of this language can be seen here from an agreement with operator CCC NV, LLC:

The Company will stock a designated and affordable line of products commonly used by senior citizens and will apply a Senior Citizen discount of up to fifteen percent (15.0%) to the sale price of these specific products for all actual customers sixty-five (65) years old or older.

While the intention to benefit the older citizens of Wellfleet is perhaps admirable, this provision is an example of the town's wishes requiring the operator to violate the law. Massachusetts recreational cannabis laws forbid retail stores from offering discounts, loyalty programs, or other types of consumer inducements.

While the statute and other Commission guidance clearly indicate that localities should be transparent and expect any agreement, they reach with operators to be public, not all agreements demonstrate a commitment to this transparency. Standing apart from the concerning examples of vague legal provisions covered above, we found one instance of an agreement in direct contradiction of the required transparency. An agreement between the town of Southwick and operator Calyx & Pistils, Inc. contains a provision that maintains that the contract should be held "strictly confidential" unless otherwise required by law:

21. This Agreement and its terms shall be held strictly confidential by the Town and the Company and may be disclosed only as required by law or governmental order or regulation.

While this provision is operatively weak—it does not protect the agreement from public records law in Massachusetts—it indicates an expectation that the agreements are somehow outside the public record and contain some element of non-public information. Considering the clear language of the statute in relation to public spending, localities should not allow provisions that might create this expectation to be inserted into agreements.

IMPACT FEE

As stated earlier, we struggled to obtain consistent responses to public records requests for documentation of municipal spending of impact fee payments. This is itself a finding, as legislators and supporters of cannabis legalization sought to drive transparency and accountability for operators, localities, and members of the public. We expect that municipalities across the Commonwealth will continue to develop plans to spend these funds and note that elected officials may be waiting for the Legislature to clarify the law on HCAs before they commit to publishing a plan.

Using data from the Commission on license renewals, we were able to account for approximately \$5.3 million in impact fees paid to 48 towns, though only 29 showed transfers greater than \$0. We have specifically accounted for public records responses from a subset of towns in which an operator has filed for license renewal, indicating that there is an active cannabis licensee in that jurisdiction. Many of the responses did not answer our question about where funding was going, possibly indicating that they had no relevant records to share. Nearly half of the towns with license renewals indicated that they had no plan to spend the funds received under HCAs, including some that had received funds, according to

Commission data. These towns included Worcester, Somerset, Medway, Hudson, Greenfield, Gardner, Chicopee, Ayer, and Amherst.

While our reporting in this category should not be understood as representative of the whole, we have reproduced some of the plans we did receive to demonstrate those that exist. One of the most straightforward came from the town of Athol in the form of a memo to the local finance committee. This memo includes the following language, which reflects the uncertain status of these funds and the scrutiny that local leaders will face in spending them:

As noted in my prior memoranda, there is growing scrutiny statewide from industry groups about whether HCA revenues would exceed actual costs that municipalities incur as a result of these facilities locating in the town (which would contravene the statute). Most recently, the U.S. Attorney's Office in Boston has issued subpoenas to many communities (including Athol) for all documentation relative to development of the HCAs and permitting for retail outlets. Due to uncertainty of whether HCA revenue will be a continuing and reliable source of revenue after the initial five-year term, the Town should not consider this as revenue for recurring operational budgets.

This same plan from Athol proposes the following distribution of cannabis HCA revenues:

- 30 percent to Downtown Infrastructure Improvements Program
- 30 percent to Capital Plan and Capital Stabilization
- 30 percent to Other Post-Employment Benefits (OPEB) Trust Fund
- 10 percent for annual drug prevention education, training, and enforcement

(By way of example, if the local enterprises generate a combined \$10,000,000 in gross revenue the Town would receive \$300,000 per year to allocate per the above or similar formula.)

For comparison, a host agreement the town signed with operator 1620 Labs cites the following potential impacts on the town:

WHEREAS, the Town anticipates that, as a result of the Company's ME, the Town will incur addition [sic] expenses and impacts upon its road system and infrastructure, law enforcement, inspectional services, permitting services, legal services, administrative services and public health services, in addition to potential additional unforeseen impacts upon the Town. Said impacts may include but are not limited to; (a) increased use of Town services; (b) increased demand on Town water supply; (c) increased traffic and traffic congestion; (d) increased issues related to public safety and addictive behavior; (e) greater need for youth education; and (f) general quality of life. Accordingly, in order to mitigate the direct and indirect financial impact upon the Town and use of Town resources, the Company agrees to annually pay a community impact fee to the Town, in the amounts and under the terms provided herein (the "Annual Payments").

Though the town of Athol has not received any money, according to the renewal data provided by the Commission and our records request, the specific allocation in the above memo provides a clear roadmap, though with a tenuous connection to the impacts stated in their HCAs. Only 10 percent is going to services related to drug prevention, and another 60 percent going to potential capital improvements to the town and the downtown business district. The 30 percent contribution to the town's OPEB fund is perhaps the most difficult to connect; while the above agreement does discuss impacts on administrative and other town services, this percentage seems arbitrary and lacks any specific justification. While Athol's plan should be recognized for its clarity, we have concerns about the lack of transparent links between the spending of these funds and the actual impacts on town operations and the local community.

A similar distribution from the town of Brockton can be found in a provided resolution:

- Up to 25% of Total: to hire and retain public safety personnel
- Up to 20% of Total: for DPW infrastructure (i.e. Roads, Water and Sewer)
- Up [sic] 15% of Total: to retain Teachers and Classroom support
- Up to 10% of Total: for Parks improvement and Recreational facilities
- Up to 10% of Total: for Social Services support (drug education and intervention)
- Up to 5% of Total: for Senior Citizen support and the COA

We also received a specific budget allocation from the city of Brookline, which can be found in Appendix E. The Commission data from renewals does not indicate any receipts, though this is likely inaccurate as the city played host to one of the few open recreational establishments in the Boston metro area for months after stores began opening. This proposal shows that Brookline has chosen to use their HCA payments in part to fund drug-prevention services that would otherwise come out of the city's education budget, as well as to provide money for police drug enforcement, parking enforcement, and litter control. These costs are potentially justifiable in light of Brookline's cited impacts, but further information would be needed to determine whether the accounted-for personnel focus on impacts from cannabis or a greater range of substances.

Other responses from towns indicated a plan in place, but with far less specification than Athol and Brookline provided. Responses from the cities of Pittsfield and Brockton indicated that the HCA payments would either be rolled over to cover existing municipal debt or be placed in the town's general funds. Some of the responses provided an informal description of municipal officials' plans, as this response from the records office in Uxbridge indicates:

Yes, we have, primarily for Public Safety; we have determined that the biggest impact to our Town from the businesses that have been approved and are currently in the process of locating to Town will be to our town water infrastructure, we are studying the impact in Town and will look to use these impact funds to improve our delivery infrastructure to the areas of Town where these businesses are currently located. We are also looking to establish a Drug Awareness Task Force with \$10,000 initially to

make young adult users of cannabis aware of some of the problems that may occur with frequent use.

Likewise, the town of Wareham provided a resolution that indicates that 25 percent of the cannabis HCA revenues would be dedicated to building a new police station. We deemed these partial plans for the purpose of our analysis. Several other municipalities, such as Lakeville, Lowell, and Marlborough, sent over a large amount of documentation, much of which was not germane to our questions, and a further review was unable to locate a specific budgetary plan with the specificity seen in Athol and Brockton. Lack of any response from Easthampton, Littleton, and Millbury prevented any assessment of their plans or lack thereof.

CONCLUSIONS

This project has sought to establish the current state of play on Host Community Agreements in the Commonwealth. As many municipalities have done extensive due diligence to make sure their interests are represented as Massachusetts moves towards full implementation of a recreational market for cannabis, these agreements represent the product of policy changes to the ballot initiative adopted by the Legislature and among local elected officials responsible for approval and licensing. These findings are reported in light of this learning and the understanding that while we believe that there are significant improvements to be made in the oversight of these agreements, both towns and operators are operating in good faith to protect their own interests and come to a mutually beneficial conclusion.

We find that many municipalities have inserted clauses into these agreements that compel actions from cannabis operators in excess of their legal obligations and, in some cases, the limitations of the statute. The argument for these obligations, as stated in the agreements, is that cannabis businesses expose the communities that host them to additional costs and expenses beyond that of other businesses. However, many of the stated impacts that have been specified should be covered by local taxes that these operators would otherwise be subject to, while others are vague and difficult to justify. Other requests made of the licensee—such as providing employee time towards addiction training for local youth—are perhaps more closely connected with the potential impact of cannabis operators, though there is little cause to believe that the employees of cannabis dispensaries are currently best equipped to provide this sort of engagement.

We also find that the oversight structure for these agreements, and for the money localities collect under them, to be weak and inadequate. While the Legislature was correct to clearly indicate in the statute that HCAs themselves and any spending resulting from funds collected under the agreements were explicitly defined as public records, this has not led to a robust accountability structure for this funding. Nearly all municipalities elected to collect the full 3 percent, and few agreements included any provisions for a process to review the impact fee before the five-year deadline in the statute. In fact, most agreements contained language where operators explicitly waived any right to review impacts and reassess the rate at which they were paying.

With the municipal shutdowns hindering our data collection as well as the municipal planning on the budgeting of these funds prevented a full accounting of the money collected under HCAs, the answers we were able to gather demonstrate little clarity or agreement among municipalities on appropriate spending of the money gathered. While some towns used the funds to pay for minor improvements and police training, or in select cases appropriated it according to more specific plans, the public records responses show no effort to account for the impacts of legalization. Legal guidance from the Commission gave little advice on this to municipalities, resulting in a variety of divergent approaches that do not support the central presumption that municipalities and the communities they serve are bearing a large unaccounted-for burden as a result of the siting of these businesses in their borders.

Nearly four years after the voters of the Commonwealth approved legalization, municipalities should be able to clearly show how these businesses are impacting their communities in order to justify the collection of broadly defined fees from state-licensed businesses. Clear action by the Legislature to give the Cannabis Control Commission the requisite authority to ensure that these businesses can operate is only the first step toward ensuring publicly accountable oversight for millions of dollars of what have

become public funds. Regulation of the cannabis industry by state leaders should be focused on the public health goals of youth diversion and curbing harmful behaviors while respecting the will of the voters that the state benefit from the revenue of a legal and transparent cannabis industry.

RECOMMENDATIONS

The Massachusetts Legislature should pass appropriate legislation to give the Cannabis Control Commission the clear authority to review Host Community Agreements and increase transparency and accountability to funds paid by operators under these agreements. The Legislature should also consider further limiting the amount local governments can collect as an impact fee or further specifying the types of expenses this impact fee can be spent on. Finally, the Legislature should examine the state of alcohol regulation in the Commonwealth and seek to equalize the relative burdens placed on cannabis operators in light of this examination.

The Cannabis Control Commission should hold hearings and, if needed, conduct focused research with municipal budget managers to identify the additional expenses their communities have incurred by hosting cannabis operators. The Commission should also establish appropriate regulations and guidance around HCAs including the following:

- Explicit definitions of impacts appropriate under HCAs
- Sample language of a collaborative review process between operator and municipality to evaluate impact fees
- Clear language indicating that municipalities are obligated to account for funds collected under HCAs and a reporting structure for the Commission to collect and publish this documentation
- Prohibition of HCAs that obligate financial contributions over the statutory limit, whether by donations, direct expenses payment, or another method
- A framework for operators and municipalities to collaborate on preventing addiction or misuse within the context of other possibly harmful substances
- A statement that operators with non-compliant agreements will be declined renewal of their license

In addition to the above regulations, the Commission should provide guidance to cannabis licensees to better qualify them for participation in local drug-prevention efforts. Examples might include trainings on diversion to registered agents and train-the-trainer sessions from public health experts. Should municipal officials seek the help of a licensee or registered agent employees to conduct drug-prevention training, the materials used in this effort should reflect best practices in public health and be vetted by experts in that field.

Lastly, localities should follow the best practice of developing and revising Host Community Agreements to ensure that their residents' interests are being protected, while providing for the long-term financial health of any cannabis operators that choose to locate within their borders. Organizations like the Massachusetts Municipal Association can provide guidance and training on how to best comply with the relevant law and regulations.

APPENDIX A: LIST OF TOWNS

| | | | |
|-------------|------------------|--------------------|------------------|
| ADAMS | EASTHAMPTON | MAYNARD | SHEFFIELD |
| AMESBURY | EGREMONT | MEDWAY | SHREWSBURY |
| AMHERST | FAIRHAVEN | MELROSE | SOMERSET |
| ARLINGTON | FALL RIVER | MENDON | SOMERVILLE |
| ASHBY | FITCHBURG | MIDDLEBOROUGH | SOUTHAMPTON |
| ATHOL | FRAMINGHAM | MILFORD | SOUTHBRIDGE |
| ATTLEBORO | FRANKLIN | MILLBURY | SOUTHWICK |
| AYER | FREETOWN | MILLIS | SPRINGFIELD |
| BARRE | GARDNER | MILLVILLE | SWANSEA |
| BECKET | GEORGETOWN | MONSON | TAUNTON |
| BEDFORD | GLOUCESTER | MONTAGUE | TEMPLETON |
| BELCHERTOWN | GRAFTON | NANTUCKET | TYNGSBOROUGH |
| BELLINGHAM | GREAT BARRINGTON | NEW BEDFORD | UXBRIDGE |
| BERKLEY | GREENFIELD | NEWBURYPORT | WARE |
| BERNARDSTON | HADLEY | NEWTON | WAREHAM |
| BEVERLY | HANSON | NORTH ADAMS | WARREN |
| BILLERICA | HARVARD | NORTH ATTLEBOROUGH | WATERTOWN |
| BLACKSTONE | HATFIELD | NORTH BROOKFIELD | WEBSTER |
| BOSTON | HAVERHILL | NORTHAMPTON | WELLFLEET |
| BREWSTER | HINSDALE | NORTHBRIDGE | WEST BOYLSTON |
| BRIDGEWATER | HOLBROOK | ORANGE | WEST STOCKBRIDGE |
| BROCKTON | HOLLISTON | OTIS | WEST TISBURY |
| BROOKLINE | HOLYOKE | OXFORD | WESTFIELD |
| CHARLTON | HOPEDALE | PITTSFIELD | WHATELY |
| CHELSEA | HUDSON | PLAINFIELD | WILLIAMSTOWN |
| CHESHIRE | KINGSTON | PLAINVILLE | WINCHENDON |
| CHESTER | LAKEVILLE | PLYMOUTH | WORCESTER |
| CHICOPEE | LANESBOROUGH | PROVINCETOWN | |
| CLINTON | LEE | RANDOLPH | |
| COLRAIN | LEICESTER | REHOBOTH | |
| CONWAY | LEOMINSTER | ROCKLAND | |
| CUMMINGTON | LITTLETON | ROWLEY | |
| DEERFIELD | LOWELL | ROYALSTON | |
| DOUGLAS | LYNN | SALEM | |
| DRACUT | MARLBOROUGH | SALISBURY | |
| DUNSTABLE | MARSHFIELD | SEEKONK | |
| EASTHAM | MASHPEE | SHARON | |

APPENDIX B: PUBLIC RECORDS REQUEST LANGUAGE

Dear custodian of records:

Under the Massachusetts Public Records Act § 66-10 we are requesting public records related to your town or city's negotiation and adoption of Host-Community Agreements under 935 Code of Massachusetts Regulations 500.000, as well as all information about funds received under these agreements to pay for the impact of these licensees. These records can include-

- copies of HCAs as executed or in current draft form (link to publicly posted HCAs is sufficient)
- planning document or proposed budget that contains proposed details for spending money collected under HCA. If no plan exists please specify that

You may include any other records that are responsive to the above query, but please feel free to ask for clarification as needed.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50. However, we would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of how these agreements are negotiated as well as how towns and cities are using these funds to address the impact of cannabis legalization, and influence research for policymakers considering further action on this matter. This information is not being sought for commercial purposes.

The Massachusetts Public Records Act requires a response to this request within 10 days. If access to the records we are requesting will take longer than this amount of time, please contact us with information about when we might expect copies of the requested records. We understand the nature of the ongoing public health crisis and its impact on municipal operations across the state. If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to us under the law. In order to streamline your response and avoid any costs, you may use [this simple Google Form](#) to respond to this request.

Thank you for considering our request.

Sincerely,
Massachusetts Cannabis Host Community Agreement Research Project
(please contact masscannabishca@gmail.com for any questions on this request)

*if you have already received and responded to this request, we apologize for the duplication.

APPENDIX C: HCA CODING FORM

HCA Coding Form

Town

Your answer _____

Operator

Your answer _____

Types of Licences the HCA covers(check all that apply)

Retailer

Wholesaler

Cultivator

Microbusiness

Product Manufacturer

Craft Cooperative

Independent Testing Laboratory

Transportation

Medical (any type)

Other: _____

What "impacts" does the HCA specify?

roads

water

other infrastructure

Inspectional services

law enforcement

fire protection

permitting

consulting

administrative services

public health

traffic studies

youth prevention

addiction services

environmental/pollution(air, water, light & noise)

quality of life

educational

housing

increased need for city services

displacement of existing businesses

NONE SPECIFIED

Other: _____

How is the "impact" fee specified?

Whole dollar amount

Percentage

Both, operator pays smaller

Both, operator pays greater

Other: _____

Percentage specified in agreement.

Your answer _____

Does the HCA address any of the following:

Signage

Hours

Security

"hire local" mandate

Tax rate re-opener

5-year expiration

Automatic renewal

Does the agreement specify for any additional payments beyond the impact fee, including donations to local groups?

Permit/Connection Fee

Late Payment Penalties

Real Estate/Property Tax

Donation to Local Non-profit

Local Taxes

Operator will pay for specific improvement

Facility Consulting fee(s)

Non-monetary support to local educational programs

NONE SPECIFIED

Other: _____

Notes/Follow-up Comments

Your answer _____

APPENDIX D: EXCERPTED AGREEMENTS

This report includes excerpts from the following agreements, which were generally representative of the agreements found by the research team. These agreements are linked in full below. A full data file of the agreements can be acquired by emailing the report authors.

- 1- [Holyoke- Buudda Brothers](#)
- 2- [Fitchburg- Garden Remedies](#)
- 3- [New Bedford- Southwest Apothecaries](#)
- 4- [Nantucket- ACK Natural](#)
- 5- [Sheffield- Ten Ten](#)
- 6- [Marshfield- Frozen 4](#)
- 7- [Orange- TDMA](#)
- 8- [Winchendon-Jolly Green](#)
- 9- [Newton- Cyprus Tree Management](#)
- 10- [Lanesborough- Royal Hemp](#)
- 11- [Holliston- Mederi](#)
- 12- [Belchertown- Kalyx](#)
- 13- [Ware- Curaleaf](#)
- 14- [Templeton- Tempest](#)
- 15- [West Stockbridge- Wiseacre Farms](#)
- 16- [Greenfield - 15 Arch](#)
- 17- [Otis- Turning Leaf Centers](#)
- 18- [Douglas- Z&T](#)
- 19- [Shrewsbury- Prime Wellness Center](#)
- 20- [Nantucket- ACK Natural](#)
- 21- [Southwick- Calyx & Pistils](#)
- 22- [Athol- 1620 Labs](#)
- 23- [Northampton- NETA](#)
- 24- [Wellfleet- CCC NV](#)

APPENDIX E: BUDGET EXHIBITS

ATHOL

TOWN OF ATHOL



Office of the Town Manager
Email: ssuhoski@townofathol.org

MEMORANDUM

TO: Finance and Warrant Advisory Committee
FR: Shann A. Suhoski, Town Manager
RE: Allocation Plan for Potential Marijuana HCA Revenue
DT: November 20, 2019

The Town currently has six marijuana establishments that have received local approvals from the Board of Planning and Community Development and Board of Selectmen. An additional potential cultivation and manufacture site off Route 32 near the Route 2 Interchange is seeking local approvals:

| Name | Address | Type |
|-------------------------|--------------------------|---------------------------------|
| 1620 Labs | 1 Exchange Street | Manufacture |
| MossGrow LLC | 134 Chestnut Hill Ave. | Manufacture and Cultivate |
| *Elev8 Cannabis | 243 Main Street | Retail Sales |
| *Blue Jay Botanicals | 22 Chestnut Hill Ave. | Retail Sales |
| Greensleaf Analyticals | 134 Chestnut Hill Ave. | Testing Laboratory |
| Root 2 Naturals | 201 Daniel Slays Highway | Micro-enterprise (mfr. & cult.) |
| (proposed) The Botanist | Petersham Road (Rt. 32) | Manufacture and Cultivate |

*Proposed retail location (Athol quota is two).

The Town will receive a three percent sales tax should the two proposed retail shops receive licensure (similar distribution as meals tax). In addition, the Town will receive three percent Host Community Agreement funds from all manufacturing and cultivation facilities (but not the testing laboratory) that may operate in the Town. Under current state law these annual HCA payments will expire in five years (though the parties may mutually agree to successor agreements).

As noted in my prior memoranda, there is growing scrutiny statewide from industry groups about whether HCA revenues would exceed actual costs that municipalities incur as a result of these facilities locating in the town (which would contravene the statute). Most recently, the U.S. Attorney's Office in Boston has issued subpoenas to many communities (including Athol) for all documentation relative to development of the HCAs and permitting for retail outlets. Due to uncertainty of whether HCA revenue will be a continuing and reliable source of revenue after the initial five year term, the Town should not consider this as revenue for recurring operational budgets.

As a result, and after consultation with the Finance Team, on November 5, 2019 the Board of Selectmen endorsed my recommended allocation plan for HCA revenues as follows:

- ° 30 percent to Downtown Infrastructure Improvements Program
- ° 30 percent to Capital Plan and Capital Stabilization
- ° 30 percent to Other Post-Employment Benefits (OPEB) Trust Fund
- ° 10 percent for annual drug prevention education, training and enforcement

(By way of example, if the local enterprises generate a combined \$10,000,000 in gross revenue the Town would receive \$300,000 per year to allocate per the above or similar formula.)

I am requesting that the FWAC review and endorse the above plan to be incorporated in the Town's fiscal policies so that we are prepared when revenue begins to flow to the Town.

BROOKLINE

| HCA FUNDING PROPOSALS | | | |
|-----------------------|--|-------------------|---------------------|
| DEPARTMENT | PERSONNEL REQUESTS | FY20 | FY21 |
| POLICE | Public Consumption Enforcement (OT) | \$ 50,000 | \$ 50,000 |
| POLICE | Lt. Inspectional (OT) | \$ 30,916 | \$ 30,916 |
| POLICE | Parking Enforcement Officers (2) | \$ 95,592 | \$ 97,504 |
| POLICE | Police Bike Unit | \$ 161,436 | \$ 175,030 |
| GROUP HEALTH | Benefits | \$ 77,108 | \$ 81,760 |
| | TOTAL POLICE | \$ 415,052 | \$ 435,210 |
| HEALTH | Substance Abuse Counselor (Shift from Schools) | \$ 61,048 | \$ 62,269 |
| HEALTH | PT Substance Abuse Counselors (3 PT) | \$ 25,000 | \$ 25,000 |
| HEALTH | Community Health Specialist | \$ 50,000 | \$ 60,000 |
| HEALTH | Epidemiologist | \$ - | \$ 60,000 |
| HEALTH | Environmental Health Policy Analyst | \$ - | \$ 70,000 |
| GROUP HEALTH | Benefits | \$ 15,000 | \$ 57,000 |
| | TOTAL SB | \$ 151,048 | \$ 334,269 |
| SB | Cannabis Licensing & Mitigation Coordinator | \$ 80,000 | \$ 70,112 |
| GROUP HEALTH | Benefits | \$ 24,000 | \$ 21,034 |
| | TOTAL SB | \$ 104,000 | \$ 91,146 |
| DPW | Park Enforcement (OT) | \$ 30,000 | \$ 30,000 |
| DPW | Litter Enforcement MEO II (1) | \$ 52,738 | \$ 53,793 |
| GROUP HEALTH | Benefits | \$ 15,821 | \$ 16,138 |
| | TOTAL DPW | \$ 98,559 | \$ 99,931 |
| | TOTAL PERSONNEL COSTS | \$ 768,660 | \$ 960,556 |
| DEPARTMENT | NON-PERSONNEL REQUESTS | FY20 | FY21 |
| DPW | Litter Receptacles | \$ 12,000 | \$ 12,000 |
| DPW | Signage | \$ 15,000 | \$ 15,000 |
| DPW | Vehicle for addtl. FTE | \$ 25,000 | \$ - |
| POLICE | Uniforms/Supplies | \$ 25,000 | \$ 25,000 |
| POLICE | Education/Training/Conferences | \$ 17,000 | \$ 17,000 |
| HEALTH | Supplies | \$ 5,000 | \$ 20,000 |
| SB | Supplies | \$ - | \$ 1,000 |
| SB | Education/Training/Conferences | \$ - | \$ 1,000 |
| | TOTAL NON-PERSONNEL COSTS | \$ 99,000 | \$ 91,000 |
| | TOTAL | \$ 867,660 | \$ 1,051,556 |

APPENDIX F: HCA CONTRACTUAL DONATIONS BY TOWN

| | | | |
|------------------|-----------|--------------|----------|
| Salem | \$250,000 | Oxford | \$25,000 |
| Chelsea | \$200,000 | Swansea* | \$25,000 |
| Northampton | \$155,000 | Webster | \$25,000 |
| New Bedford | \$150,000 | Orange | \$22,500 |
| Chicopee | \$125,000 | Bellingham | \$20,000 |
| West Boylston | \$100,000 | Lee | \$20,000 |
| Salisbury | \$85,000 | Provincetown | \$15,000 |
| Ayer | \$81,000 | Ware | \$15,000 |
| Amherst | \$75,000 | Attleboro | \$10,000 |
| Brockton | \$75,000 | Berkley | \$10,000 |
| Athol | \$70,000 | Easthampton | \$10,000 |
| Amesbury | \$60,000 | Gardner* | \$10,000 |
| Great Barrington | \$60,000 | Grafton* | \$10,000 |
| Lakeville* | \$60,000 | Nantucket | \$10,000 |
| Charlton | \$50,000 | Newton | \$10,000 |
| Fitchburg | \$50,000 | Somerset | \$10,000 |
| Haverhill | \$50,000 | Southampton | \$10,000 |
| Tyngsborough | \$50,000 | Templeton | \$10,000 |
| Plymouth | \$45,000 | Wareham* | \$10,000 |
| Rockland | \$45,000 | Williamstown | \$10,000 |
| Brewster | \$40,000 | Winchendon | \$10,000 |
| Georgetown | \$35,000 | Adams | \$5,000 |
| Whately* | \$35,000 | Blackstone | \$5,000 |
| Hudson | \$30,000 | Egremont | \$5,000 |
| Mashpee | \$30,000 | Warren | \$5,000 |
| Ashby | \$25,720 | Mendon | \$3,000 |
| Belchertown | \$25,000 | Bernardston | \$2,000 |
| Brookline | \$25,000 | Hadley | \$2,000 |
| Greenfield | \$25,000 | Marshfield | |
| Kingston | \$25,000 | Springfield* | |
| North Attleboro | \$25,000 | | |

* denotes where some or all the agreements for that town specify a percentage donation rather than a whole value

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