ARLINGTON SELECT BOARD

HOST COMMUNITY AGREEMENT PROCEES & CRITERIA

I. Statement of Purpose:

The purpose of this policy is to outline the process and criteria by which Host Community Agreements ("HCAs") will be authorized by the Select Board for existing or prospective marijuana establishments. It is likely that there will be a greater number of applicants than available permits/licenses. Thus, the Board anticipates that selection criteria will determine not only general suitability, but the best fits for Arlington in a competitive market. The Town Manager shall negotiate specific details and execute HCAs consistent with Board findings for approved applicants.

II. Summary of Marijuana Establishment Licensing and Permitting in Arlington

The Select Board holds a limited, but important role as the first step of the lengthy process of licensing, permitting, and opening a marijuana establishment in Arlington. As part of the legalization of adult-use (recreational) marijuana sales, M.G.L. c. 94G sec. 3(d) requires each marijuana establishments (recreational and medical) intending to site within Arlington execute an HCA as a condition of state licensure.[1] While the Manager executes contracts and agreements for the Town, the language of c. 94G requires the Select Board's authorization to enter such agreements with each applicant.

The scope of host agreements varies by community due to differences in municipal structure and where and how local permitting and licensing has been vested in each community. However, all HCAs set forth basic financial impact-mitigation as well as other identified responsibilities of marijuana establishments.

Here, the Arlington Redevelopment Board ("ARB") and the Board of Health ("BOH") are the entities primarily responsible for ensuring that marijuana establishments meet zoning standards and requirements (including siting restrictions) and state and local health and safety regulations respectively. Accordingly, some areas which might be addressed in other communities by an HCA will be scrutinized during the special permit and license processes of the ARB and BOH, which will also impose conditions related to the time, place, and manner of marijuana establishment operations.

[1] While the Town and the Massachusetts Patient Foundation/Apothca entered an HCA for the medical dispensary on Water Street in February of 2016, it should be noted that HCAs were not a required by law at that time.

The overall process of receiving all necessary local and state approvals for a marijuana establishment applicant in Arlington proceeds approximately as follows:

1. HCA authorization, negotiation and execution with the Town;
2. Hosting a community meeting as required by state regulations;
3. Applying to the Cannabis Control Commission ("CCC") for licensure;
4. Concurrently applying for a special permit to operate a marijuana establishment and operator permit before the ARB and BOH respectively;
5. Obtaining other required approvals – building permits, certificate of occupancy, etc.
6. Final inspections to ensure regulatory compliance by the CCC, Health Department, and Inspectional Services prior to receiving final state licensure.

While applicant-specific circumstances and other factors such as priority certification with the CCC for registered marijuana dispensaries could slow or accelerate successful applicants' timelines to opening, it is likely that the series of licenses and permits required for operation would take at least 9 to 12 months from the date of HCA execution.

III. Authority & Legal Considerations

A. Select Board Authority Under c. 94G sec. 3(d)

The Select Board's authority and scope of consideration for HCAs are set forth in c. 94G sec. 3(d) which reads as follows:

"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."*

(emphasis added).

The CCC interprets c. 94G narrowly, noting that HCAs are intended to complement the substantial framework of 935 CMR 500[2], which regulates many issues of concern over retail marijuana establishments on a statewide level. Those regulations control many facets of the types of signage allowed for marijuana establishments, require criminal history background checks, prohibit delivery of recreational marijuana, and establish quality control measures such as a "seed-to-sale" tracking system.[3]

According to the CCC, examples of policy-oriented stipulations and conditions which may be set forth in an HCA include:

- Relocation notice, terms and requirements;
- Prioritizing local residents for jobs created at the establishment;
- Termination conditions and/or requirements for ceasing to operate, or relocating outside of the municipality;
- Security system minimum requirements for accessing the establishment and marijuana inventories;
- Providing police details for the purposes of traffic and crowd management during peak hours of operation;
- Obligations of municipalities to submit requested and required information to the CCC;
- Provision for cooperation on municipality-sponsored public health and drug abuse prevention educational programs; and
- Agreement for cooperation with community support, public outreach and employee outreach programs between the municipality and the establishment.

See e.g. Attachment "A" CCC Guidance on Host Community Agreements.

With respect to financial terms of HCAs, both the law and the CCC cap financial arrangements at a community impact fee of 3% of gross revenue of total sales for any establishments.[4] Communities may agree to less, but not more.

B. Arlington Zoning Bylaw & ARB Review

While the Select Board may authorize some terms and conditions of operating a marijuana establishment through an HCA, it is important to do so within the context of the Arlington Zoning Bylaw marijuana regulations. As approved on December 5, 2018, the Arlington Zoning Bylaw sections 3.4, 5.5 and 8.3 govern the siting and operation of marijuana establishments. Marijuana establishments may only be sited in those districts allowing them

[2] A full copy of the CCC's 37-pages of regulations on adult-use and medical marijuana establishments can be found here: https://www.mass.gov/files/documents/2018/03/27/935cmr500.pdf

[3] Moreover, as noted above, Arlington's BOH has incorporated the State's marijuana regulations and enhanced them where permissible and harmonious with state law.

[4] Some communities and establishments have negotiated terms which applicants allege exceed such limits by requiring donations to certain non-profit entities or like financial commitments. I respectfully advise against the inclusion of such terms as indeed some of those same communities are presently facing or may soon face litigation by unsuccessful applicants on the basis that competitors agreed to terms not authorized by c. 94G sec. 3(d).

(B2A, B3, B4, B5, and Industrial districts). In order to attain a special permit in any such district, applicants must further comply with "environmental design review" ("EDR") standards.

The purpose of EDR is "to provide individual detailed review of certain uses and structures that have a substantial impact on the character of the town and on traffic, utilities, and property values, thereby affecting the public health, safety and general welfare." Zoning Bylaw Sec. 3.4.1. The twelve (12) criteria of EDR are:

- Preservation of Landscape;
- Relation of Buildings to Environment;
- Open Space;
- Circulation;
- Surface Water Drainage;
- Utility Service;
- Advertising Features;
- Special Features;
- Safety;
- Heritage;
- Microclimate; and
- Sustainable Building and Site Design.

Furthermore, marijuana establishments are also subject to special regulations set forth in section 8.3. *See,* Attachment "B," Zoning Bylaw Section 8.3. Most germane to the Select Board's consideration, the Zoning Bylaw limits the number of special permits for marijuana establishment to a total of three (3), and prohibits placement of such establishments within the following "buffer zones":

- 500 feet of K-12 schools;
- 300 feet of Town playgrounds and recreational facilities;
- 200 feet of Town libraries; and
- 2,000 feet of another like marijuana establishment of the same kind.[5]

C. Board of Health Licensing & Enforcement

Finally, the Board of Health has promulgated its "Regulation to Ensure the Sanitary and Safe Operation of Adult-Use Marijuana Establishments and the Sale of Adult-Use Marijuana," which addresses a broad range of operational and product safety subjects including how products are displayed within stories and what kind of products can be sold. Specific prohibitions include self-service displays, "out-of-package" and/or "roll-your-own" sales, and product vending machines. *See* Attachment "C" BOH Regulations. Additional requirements include annual community meetings to hear abutter feedback, and requiring surety bonds to cover Town costs in the event of unanticipated closure. These regulations also incorporate the 900 CMR 500 (the

[5] i.e. no recreational establishment within 2,000 feet of another recreational establishment or no medical dispensary within 2,000 feet of another medical dispensary.

CCC's regulations) in order to assure consistency, continuity, and maximum enforcement authority for Health Department agents and the BOH.

IV. Recommended Selection Process, Criteria and Minimum HCA Terms

Neither CCC guidance materials nor the regulations of 935 CMR 500 provide a specific process for vetting HCA applicants, especially where the limited number of special permits/licenses practically require awarding an HCA to some applicants and not others. Based upon the foregoing outline of the authorities and responsibilities, the Board's initial comments, a review of standards used by the Board to competitively select recipients for package store licenses from a pool of applicants in 2011, and surveyed criteria employed by other municipalities for awarding HCAs, this Office recommends the process, criteria, and minimum HCA terms and conditions set forth below.

A. Process

1. HCA Application & Preliminary Review

   Applicants will provide a complete HCA application to the Select Board Office, including but not limited to:

   a. Detailed business information, including identifying the type of business, the management team, and the names of all partners or managers with an ownership stake greater than 10%.

   b. Narrative response to an "Operating Questionnaire" designed to provide applicants the opportunity to highlight how they will meet the selection criteria approved by the Board (set forth in section C below: Selection Criteria).

   c. Regulatory compliance information, including detailing the license status of any marijuana license held throughout the Commonwealth, any violations of state or local rules and regulations within the last three (3) years relative to marijuana establishments or any Arlington bylaws, rules, or regulations;

   d. Supporting Materials, including the following:

      - A business plan;
      - A preliminary security plan;
      - A preliminary traffic and parking management plan;[6]
      - Evidence of site control; and

[6] The Select Board does not require a full and finalized traffic study or security plan given that the EDR Process as well as BOH regulations will heavily examine

- Certification of Zoning Compliance.[7]

e. Proposed HCA with all minimum terms and conditions included; and

f. Priority application status.[8]

A Preliminary Review Team ("PRT") consisting of the Chief of Police, the Health Director, the Planning Director, the Building Inspector, the Town Counsel, and the Town Manager or their respective designees shall review applications for completeness and provide the Board with comments, objections to applicants, or further questions for the applicants in advance of presentations to the Select Board.

An application fee of $_____ shall also be provided to the Select Board Office.

2. Presentations before the Select Board

Following PRT preliminary review, applicants will be invited to make a _____ minute presentation to the Select Board, further addressing the HCA Selection Criteria, their proposed HCA, and other information they wish to emphasize to the Board and the public.

B. Selection Criteria

The Board will consider the following criteria as probative of the quality of applicants experience and plan for operating in Arlington:

a. Completeness and quality of application;

b. Demonstrated direct experience in the cannabis industry or a similar industry, such sensitive retail and related commercial uses – package stores, establishments with other types of alcohol licenses or age-restricted products;

c. Relevant business experience in Arlington;

d. Relevant business experience in the Commonwealth of Massachusetts;

---

[7] As noted above, the Zoning Bylaw allows for marijuana establishments by special permit only in certain districts, and further establishes a variety of buffer zones where establishments may not be sited without further relief from the ARB. The ARB may grant an exception to buffer zones as provided in Zoning Bylaw sec. 8.3(b)(2). However, Given the likely competition for licenses, all applicants for HCAs should demonstrate site control in one of the zoned districts for marijuana establishments as well as siting outside a buffer zone *or* substantial evidence that an exception is feasible due to site specific conditions.

[8] In surveying other communities which have engaged in a competitive HCA process, I note for the Board's consideration that many such as Somerville and Salem afford "priority status" to two types of applicants – existing Registered Marijuana Dispensaries (RMDs) operating in their communities, and Economic Empowerment Applicants (typically businesses where a majority of ownership are minorities and/or have resided or operated in areas disproportionally impacted by prior drug policies as identified by the CCC).

e. A sound preliminary business plan which evidences applicants' financial resources, proposed scale of operation, inventory sources and plans for inventory management, as well as anticipated costs and revenues;

f. A strong employee training process and plan to ensure regulatory compliance;

g. A sound preliminary security plan including inventory;

h. A sound preliminary traffic and parking plan demonstrating basic feasibility of the site and/or intended traffic and parking mitigation measures;

i. For adult-use applicants, intention to co-locate RMD operations to ensure access to Arlington medical marijuana patients;

j. Commitment to youth safety, abuse prevention, and community education;

k. Commitment to diversity and local hiring; and

l. Maintenance of geographic balance in the distribution of marijuana establishments.

The aforementioned criteria are not exhaustive, nor are any single criteria determinative. The Board shall also weigh any objections, concerns, or comments of the PRT. Applicants are encouraged to inform the Board of unique qualifications they may possess. Further, to the extent the criteria are overlap with those which would be applied during ARB or BOH permit and license reviews, applicants are advised that the grant of an HCA by the Select Board shall not be considered as evidence of appropriateness in such processes.

C. Minimum HCA Terms & Conditions

Applicants are invited to provide their own HCA proposals with the following minimum requirements and restrictions:

1. A Community Impact Fee equal to 3.0% of the establishment's gross sales;
2. Annual filing of financial statements with the Town;
3. Provision of financial reporting records required by the CCC to the Town within a reasonable timeframe;
4. Maintenance of books and other financial records pertaining to the requirements of the HCA consistent with accounting standards and guidelines of the CCC;
5. Commitment to hiring local, qualified employees, and diverse employees to the extent consistent with the law;
6. Commitment to hiring local vendors, suppliers, and contractors from diverse businesses to the extent permitted by law;
7. Commitment to participation in youth health and safety prevention programs;

8. Cooperation with the Arlington Police Department to ensure effective security, including periodic meetings to review of security protocols and agreement on the placement of exterior security cameras and devices; and
9. If applicable, commitment to cooperate with the Town to prevent Hardship Cultivation Registration for medical marijuana patients;

In light of the CCC's Guidance, the Select Board will not accept additional financial incentives or payments to private entities as a condition of HCAs.

V. HCA Application Decisions

The Select Board endeavors to make determinations on HCA applications in an efficient and transparent manner, mindful that successful applicants for an HCA will be scrutinized in detailed fashion during the lengthier state licensure, special permit, and BOH licensure processes. The Board will not formally score applications, nor will it issue written decisions. The Board must determine which applications will be approved in an open, public meeting. If equipped with sufficient information, the Board shall vote after hearing all applicant presentations.

ATTACHMENT "B"

B. Special permits shall lapse within three years, which shall not include such time required to pursue or await the determination of an appeal under G.L. c. 40A, § 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or, in the case of a special permit for construction, if construction has not begun by such date except for good cause.

3.4 ENVIRONMENTAL DESIGN REVIEW

3.4.1. Purposes

The purpose of Section 3.4 is to provide individual detailed review of certain uses and structures that have a substantial impact on the character of the town and on traffic, utilities, and property values, thereby affecting the public health, safety and general welfare. The environmental design review process is intended to promote the purposes in Section 1.

3.4.2. Applicability

In any instance where a new structure, or a new outdoor use, or an exterior addition or a change in use (a) requires a building permit and special permit in accordance with use regulations for the applicable district or (b) alters the façade in a manner that affects the architectural integrity of the structure, and (c) is one of the uses listed in subparagraphs A through J below, the special permit shall be acted upon by the Arlington Redevelopment Board in accordance with the environmental design review procedures and standards of this Section 3.4.

A. Construction or reconstruction on a site abutting any of the following: Massachusetts Avenue, Pleasant Street, Mystic and Medford Streets between Massachusetts Avenue and Chestnut Street, Broadway, or the Minuteman Bikeway.

B. Six or more dwelling units on the premises, whether contained in one or more structures or on one or more contiguous lots, to be constructed within a two-year period.

C. Auto service stations.

D. Single-room occupancy building or bed and breakfast, with more than 5,000 square feet of gross floor area or with 10 or more parking spaces.

E. Nonresidential uses and hotels/motels in a nonresidential district with more than 10,000 square feet of gross floor area or with 20 or more parking spaces.

F. Nonresidential uses in a residential district with more than 5,000 square feet of gross floor area or with 10 or more parking spaces.

G. Mixed-Use.

H. Outdoor uses.

I. Temporary, seasonal signage in accordance with an overall signage plan at a fenced athletic field with one or more permanent structures to seat more than 300 persons,

which signage may be in effect between March 15 and December 15 of any calendar year.

J. Use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; or the use of land or structures for a child care facility; provided, however, as provided and limited by the provisions of G.L. c. 40A, § 3, that the Board's authority shall be limited to reasonable regulation of the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking, and building coverage requirements.

The following uses shall also be acted upon by the Arlington Redevelopment Board in accordance with the environmental design review procedures and standards of this Section 3.4:

(1) Any use permitted as a right or by special permit in the Planned Unit Development District and the Multi-Use District.

(2) Parking in the Open Space District.

(3) Medical Marijuana Treatment Center.

(4) Marijuana Establishment.

3.4.3. **Procedures**

A. Application. Applicants shall submit an application for Environmental Design Review in accordance with the Arlington Redevelopment Board's ("Board") rules and regulations.

B. The Board shall hold a public hearing in accordance with Section 3.3 of this Bylaw and G.L. c. 40A, §§ 9 and 11.

C. The Board shall refer the application to the Department of Planning and Community Development ("Department"), which shall prepare and submit written reports with recommendations to the Board before or at the public hearing. The Board shall not take final action on the special permit application until it has received the Department's report or until 35 days have elapsed after submittal of the proposal to the Department. Failure of the Department to submit written reports or to give an oral report at the public hearing shall not invalidate action by the Board.

D. A favorable decision by the Board shall require the votes of at least four members.

E. The Board shall not deny a special permit under this Section 3.4 unless it finds that the proposed use does not comply with the Environmental Design Review Standards listed below to such a degree that such use would result in a substantial adverse impact upon the character of the neighborhood or the town, and upon traffic, utilities, and public or private investments, thereby conflicting with the purposes of this Bylaw.

3.4.4. **Environmental Design Review Standards**

The following standards shall be used by the Board and the Department in reviewing site and building plans. The standards are intended to provide a frame of reference for the applicant in the development of site and building plans as well as a method of review for the reviewing authority. They shall not be regarded as inflexible requirements and they are not intended to discourage creativity, invention, and innovation.

The specification of one or more architectural styles is not included in these standards. The Board may adopt design guidelines to supplement these standards in order to administer this Section 3.4, and maintain those guidelines on file with the Department and the Town Clerk. The standards of review outlined in subsections A through K below shall also apply to all accessory buildings, structures, free-standing signs and other site features, however related to the major buildings or structures.

A. Preservation of Landscape. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas.

B. Relation of Buildings to Environment. Proposed development shall be related harmoniously to the terrain and to the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. The Arlington Redevelopment Board may require a modification in massing to reduce the effect of shadows on abutting property in an R0, R1 or R2 district or on public open space.

C. Open Space. All open space (landscaped and usable) shall be so designed as to add to the visual amenities of the vicinity by maximizing its visibility for persons passing the site or overlooking it from nearby properties. The location and configuration of usable open space shall be so designed as to encourage social interaction, maximize its utility, and facilitate maintenance.

D. Circulation. With respect to vehicular, pedestrian and bicycle circulation, including entrances, ramps, walkways, drives, and parking, special attention shall be given to location and number of access points to the public streets (especially in relation to existing traffic controls and mass transit facilities), width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, and arrangement of vehicle parking and bicycle parking areas, including bicycle parking spaces required by Section 8.13 that are safe and convenient and, insofar as practicable, do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties.

E. Surface Water Drainage. Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Available Best Management Practices for the site should be employed, and include site planning to minimize impervious surface and reduce clearing and re-grading. Best Management Practices may include erosion control and stormwater treatment by means of swales, filters, plantings, roof gardens, native vegetation, and leaching catch basins. Stormwater should be treated at least minimally on the development site; that which cannot be handled on site shall be removed from all roofs, canopies, paved and pooling areas and carried away in an

underground drainage system. Surface water in all paved areas shall be collected at intervals so that it will not obstruct the flow of vehicular or pedestrian traffic, and will not create puddles in the paved areas.

In accordance with Section 10.11, b, the Board may require from any applicant, after consultation with the Director of Public Works, security satisfactory to the Board to insure the maintenance of all stormwater facilities such as catch basins, leaching catch basins, detention basins, swales, etc. within the site. The Board may use funds provided by such security to conduct maintenance that the applicant fails to do.

The Board may adjust in its sole discretion the amount and type of financial security such that it is satisfied that the amount is sufficient to provide for the future maintenance needs.

F. Utility Service. Electric, telephone, cable TV and other such lines and equipment shall be underground. The proposed method of sanitary sewage disposal and solid waste disposal from all buildings shall be indicated.

G. Advertising Features, subject to the provisions of Section 6.2 below. The size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall not detract from the use and enjoyment of proposed buildings and structures and the surrounding properties.

H. Special Features. Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.

I. Safety. With respect to personal safety, all open and enclosed spaces shall be designed to facilitate building evacuation and maximize accessibility by fire, police, and other emergency personnel and equipment. Insofar as practicable, all exterior spaces and interior public and semi-public spaces shall be so designed as to minimize the fear and probability of personal harm or injury by increasing the potential surveillance by neighboring residents and passersby of any accident or attempted criminal act.

J. Heritage. With respect to Arlington's heritage, removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

K. Microclimate. With respect to the localized climatic characteristics of a given area, any development which proposes new structures, new hard-surface ground coverage, or the installation of machinery which emits heat, vapor, or fumes, shall endeavor to minimize, insofar as practicable, any adverse impact on light, air, and water resources, or on noise and temperature levels of the immediate environment.

L. Sustainable Building and Site Design. Projects are encouraged to incorporate best practices related to sustainable sites, water efficiency, energy and atmosphere, materials and resources, and indoor environmental quality. Applicants must submit a

current Green Building Council Leadership in Energy and Environmental Design (LEED®) checklist, appropriate to the type of development, annotated with narrative description that indicates how the LEED® performance objectives will be incorporated into the project.

E. Affordable units shall be dispersed throughout the development and shall be comparable to market-rate units in terms of location, quality and character, room size, number of rooms, number of bedrooms and external appearance.

8.2.4. **Incentive**

Notwithstanding the special permit requirement under Section 6.1.10, Location of Parking Spaces, and 6.1.11, Parking and Loading Space Standards:

A. The applicant shall have the option to reduce the number of spaces required in Section 6.1.4, Table of Off-Street Parking Regulations by up to 10 percent.

B. In the case of a single-room occupancy building or dormitory, where more than 50% of the units are affordable to households earning no more than 60% of Area Median Income, the number of parking spaces for the affordable units may be reduced to 50% of the requirements, by special permit, where it can be shown that the parking provided will be sufficient for both residents and employees.

8.2.5. **Administration**

A. The Arlington Redevelopment Board shall administer this Section 8.2 and may adopt administrative rules and regulations to implement its provisions.

B. Occupancy permits may be issued for market-rate units prior to the end of construction of the entire development provided that occupancy permits for affordable units are issued simultaneously on a prorata basis.

C. Sales prices, resale prices, initial rents and rent increases for affordable units shall be restricted to ensure long-term affordability to eligible households, to the extent legally possible.

D. The affordable units shall be subject to a marketing plan approved by the Director of Planning and Community Development, consistent with federal and state fair housing laws and the Town of Arlington's approved Affirmatively Furthering Fair Housing plan and policies, on file in the Department of Planning and Community Development.

E. To the extent not inconsistent with the provisions of G.L. c.183A, condominium documentation shall provide the owners of the affordable units with voting rights sufficient to ensure an effective role in condominium decision-making.

All legal documentation shall be subject to review and approval by Town Counsel or its designee.

8.3 STANDARDS FOR MARIJUANA USES

For all marijuana uses, the following standards apply:

A. General

(1) Marijuana Establishments and Medical Marijuana Treatment Centers shall be allowed only after the granting of an Environmental Design Review Special Permit by the Arlington Redevelopment Board, subject to the requirements of Section 3.4 and this Section.

(2) Marijuana Retailers and Marijuana Production Facilities, as defined in Section 2, may be established to provide Marijuana Products for medical use, non-medical use, or both, in accordance with applicable state laws and regulations.

(3) Marijuana Establishments and Medical Marijuana Treatment Centers shall be located only in a permanent building and not within any mobile facility. All sales, cultivation, manufacturing, and other related activities shall be conducted within the building, except in cases where home deliveries are authorized pursuant to applicable state and local regulations.

(4) Marijuana Production Facilities shall not be greater than 5,000 square feet in gross floor area, and shall be licensed as a Marijuana Microbusiness if Marijuana Products are cultivated or produced for non-medical use.

(5) A Marijuana Retailer or Marijuana Production Facility that has previously received an Environmental Design Review Special Permit from the Arlington Redevelopment Board for a Medical Marijuana Treatment Center shall be required to amend its previously issued Special Permit to authorize the conversion to or co-location of a Marijuana Establishment for the non-medical use of marijuana.

B. Location

(1) Pursuant to 935 CMR 500.110, Marijuana Establishments shall not be permitted within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades one through 12. This standard also applies to Medical Marijuana Treatment Centers not already permitted by the date of this bylaw.

(2) Marijuana Establishments and Medical Marijuana Treatment Centers, not already permitted by the date of this bylaw, shall not be located within 300 feet of Town-owned playgrounds and recreational facilities and 200 feet of public libraries, unless a finding of the Arlington Redevelopment Board determines that the location, based on site-specific factors, or if the Applicant demonstrates, to the satisfaction of the Arlington Redevelopment Board, that proximity to the aforementioned facilities will not be detrimental based upon criteria established in 3.3.3 and 3.3.4.

(3) A Marijuana Retailer shall not be permitted within 2,000 feet of another Marijuana Retailer; A Medical Marijuana Treatment Center shall not be permitted within 2,000 feet of another Medical Marijuana Treatment Center.

C. Cap on the number of Special Permits for Marijuana Retailers

(1) The Arlington Redevelopment Board shall not grant a special permit if doing so would result in the total number of Marijuana Retailer licenses to exceed a maximum of three.

ATTACHMENT "A"

Cannabis Control Commission
COMMONWEALTH OF MASSACHUSETTS

Guidance on Host Community Agreements

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

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

> "A marijuana establishment or a medical marijuana treatment center seeking to operate or continue to operate in a municipality which permits such operation shall execute an agreement with the host community setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within the host community which shall include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment or a medical marijuana treatment center. An agreement between a marijuana establishment or a medical marijuana treatment center and a host community may include a community impact fee for the host community; provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center and shall not amount to more than 3 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."

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

It is also important that the parties to the HCA be mindful of not only the statutory language in M. G. L. c. 94G, but also the context in which an HCA is required to be negotiated. Section 3(d) of chapter

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

94G should be read in conjunction with M. G. L. 64H and 64N, the statutes that allow for the taxation of adult-use marijuana. Taken together, these statutes authorize and limit the assessments allowed on marijuana, marijuana products and Marijuana Establishments.

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

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

Community Impact Fee. The community impact fee authorized by G.L. c. 94G, § 3(d) is optional and separate and apart from the taxes described above. To be authorized under the statute, and consistent with the decisional law on fees, a community impact fee included in an HCA must meet certain legal requirements.[3] The fee charged must be in exchange for a benefit that is sufficiently specific and special to the Marijuana Establishment and assessed in such a way that it justifies assessing the cost to this limited group as opposed to the general public, even if the public sees some benefit.[4] Moreover, the fee should be reasonably designed to compensate the municipality for the costs of providing the benefit.[5]

Accordingly, any HCA structured consistent with G. L. c. 94G, § 3(d), may include a community impact fee, provided that the community impact fee does not amount to more than 3% of the gross annual sales of the Marijuana Establishment and meets the legal requirements of permissible fees. A community impact fee included in an HCA must be more than simply called a community impact fee; it must be structured appropriately.

What are examples of required conditions?

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

Individual conditions can vary widely. The following list should not be construed as exhaustive or exclusive, but merely serves as an illustration of conditions:

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

[2] *See* M. G. L. c. 64H, § 2 and M. G. L. c. 64N, §§2 and 3(a).
[3] See generally Emerson College v. Boston, 391 Mass. 415 (1984).
[4] Denver St. LLC v. Town of Saugus, 462 Mass. 651, 659-660 (2012).
[5] Silva v. City of Attleboro, 454 Mass. 165, 173 (2009).

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

- Termination by the Company: The Company may terminate this Agreement ninety (90) days after the cessation of operations of any facility within [Name of Municipality]. The Company shall provide notice to [Municipality] that it is ceasing to operate within the [Municipality] and/or is relocating to another facility outside the [Municipality] at least ninety (90) days prior to the cessation or relocation of operations. If the Company terminates this Agreement, the final annual payment as defined in Paragraph X of this Agreement shall be paid to the [Municipality] by the Company. The Company shall pay the final annual payment to [Municipality] within thirty (30) days following the date of termination.

- A key-and-lock system shall not be the sole means of controlling access to the Marijuana Establishment. The Company agrees to implement a method such as a keypad, electronic access card, or other similar method for controlling access to areas in which marijuana or marijuana products are kept in compliance with 935 CMR 500.110.

- The Company agrees to provide a paid police detail for the purposes of traffic and crowd management during peak hours of operation, which shall include, but may not be limited to, Fridays between 3:00 pm -8:00 pm; Saturdays and Sundays.

- [Municipality] agrees to submit to the Commission, or other such licensing authority as required by law or regulation, certification of compliance with applicable local bylaws relating to the Company's application for licensure and/or operation where such compliance has been properly met, but makes no representation or promise that it will act on any other license or permit request including by not limited to Special Permit or other zoning applications submitted by the Company in any particular way other than in accordance with the municipality's governing laws.

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

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

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

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

What is permissible as part of a community impact fee?

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

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

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

The Commission views fees that are "reasonably related" as those that compensate the municipality for its actual and anticipated expenses resulting from the operation of the Marijuana Establishment. While some latitude is to be given to municipalities to plan for their expenses, the municipality must identify the plan specifics to justify the fee. As section 3(d) requires, it is important that the fee bears some reasonable relation to the costs of providing municipal services or other benefits and not merely be a fee without designation of its origins or justification of its amount. Moreover, there must be a proportionality between the cost or impact claimed by the community and the fee required of the Marijuana Establishment.[6] Municipalities are cautioned against relying on fees that are simply revenue generators in negotiating with Marijuana Establishments and planning their municipal budgets, as these fees may not withstand judicial scrutiny.

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

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

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

- Municipal inspection costs.

The list delineated above is not intended to be exhaustive or exclusive and is merely provided as illustrative examples.

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

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

Any fee that is more than 3% of gross annual sales is not a valid community impact fee. Moreover, any fee whether characterized as a fee, donation or other exaction, including any assessment above 3% of gross annual sales, must also comply with applicable law and the legal requirements discussed above. The Commission reiterates that, consistent with the statutory requirement of "reasonable relation" and case law on exactions there must be a proportionality between the cost or impact claimed by the community and the fee required of the Marijuana Establishment. As stated G.L. c. 94G, §3 (d), the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center and shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center.

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

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

At, or before, the conclusion of the term of the preceding community impact fee, the parties may choose to negotiate a new, optional community impact fee which shall similarly be limited to a term of 5 years or less. Regardless of whether the parties choose to negotiate a new community impact fee, the Commission interprets the strict time limitation of G.L. c. 94G, §3 (d) as extinguishing the preceding community impact fee upon the expiration of 5 years or less, whichever was originally agreed to by the parties.

Applicants for licensure as a Marijuana Establishment are strongly encouraged to seek legal advice from a licensed attorney regarding the negotiation of an HCA. Eligible licensees and applicants for licensure may be qualified to receive services through the Commission's Social Equity program. If you are a participant in the Social Equity program or are interested in learning more about the services offered as part of the Social Equity program, please contact the Commission at (617) 701-8400.

ATTACHMENT "C"

Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476
Tel: (781) 316-3170
Fax: (781) 316-3175

Regulation of the Arlington Board of Health Restricting the Sale of Medical Marijuana

A. Statement of Purpose:

Whereas the citizens of Massachusetts voted in November of 2012 to declare there should be no punishment under state law for Qualifying Patients and health care professionals, Personal Caregivers for patients, or Registered Marijuana Dispensary Agents for the medical use of marijuana.

Whereas the Town of Arlington aims to abide by the aim of this law and ensure that Registered Marijuana Dispensaries abide by further regulations to ensure the public health and public safety of our residents.

Now, therefore it is the intention of the Town of Arlington to regulate the cultivation and sale of medical marijuana.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Arlington Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations".

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings. Terms not herein defined shall be used as defined in 105 CMR 725.000: IMPLEMENTATION OF AN ACT FOR THE HUMANITARIAN MEDICAL USE OF MARIJUANA.

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Board of Health: The Town of Arlington Board of Health and any of its authorized agents and representatives.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Card Holder: A Registered Qualifying Patient, a Personal Caregiver, or a Dispensary Agent of a Registered Marijuana Dispensary who has been issued and possesses a valid Registration Card.

Cultivation Site: The building, structure, enclosed space, area, room or group of rooms, and associated equipment and fixtures, where the cultivation of marijuana occurs pursuant only to a Hardship Cultivation

Registration. This shall not refer to a site or facility where the cultivation of marijuana by a Registered Marijuana Dispensary occurs, which shall be considered a Registered Marijuana Dispensary requiring a Permit to Operate a Medical Marijuana Dispensary.

Dispensary Agent: A board member, director, employee, executive, manager, or volunteer of a Registered Marijuana Dispensary, who is at least 21 years of age and who has received approval from the state under 105 CMR 725.030. Employee includes a consultant or contractor who provides on-site services to a Registered Marijuana Dispensary related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of marijuana.

Dispensary Agent Permit: A permit issued by the Board of Health, expiring on December 31st and to be renewed annually, which permits an eligible person to be employed by a Registered Marijuana Dispensary.

Dispensary Agent Permit Holder: Any employee at a Registered Marijuana Dispensary who applies for and receives a Dispensary Agent Permit.

E-Cigarette: Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Hardship Cultivation Permit: A permit issued by the Board of Health, expiring on December 31st and to be renewed annually, which permits a Personal Caregiver or a Registered Qualifying Patient to cultivate medical marijuana at a cultivation site within the Town of Arlington.

Hardship Cultivation Permit Holder: Any Personal Caregiver or Registered Qualifying Patient engaged in the hardship cultivation of marijuana who applies for and receives a Hardship Cultivation Permit.

Hardship Cultivation Registration: A registration issued to a Registered Qualifying Patient under the requirements of 105 CMR 725.035.

Limited Access Area: A building, room, or other indoor or outdoor area on the registered premises of a Registered Marijuana Dispensary where marijuana, MIPs, or marijuana by-products are cultivated, stored, weighed, packaged, processed, or disposed, under control of a Registered Marijuana Dispensary, with access limited to only those Dispensary Agents designated by the Registered Marijuana Dispensary.

Marijuana: All parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination. The term also includes Marijuana-Infused Products (MIPs) except where the context clearly indicates otherwise.

Marijuana-Infused Product (MIP): A product infused with marijuana that is intended for use or consumption, including but not limited to edible products, ointments, aerosols, oils, and tinctures. These products, when created or sold by a Registered Marijuana Dispensary, shall not be considered a food or a drug as defined in M.G.L. c. 94, s. 1.

Nicotine Delivery Product: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces rolled marijuana products solely for the individual's own personal consumption or use) that is capable of making rolled marijuana products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Paraphernalia: "Drug paraphernalia" as defined in M.G.L. Ch. 94C, §1.

Permit to Operate a Registered Marijuana Dispensary (hereafter referred to as "RMD Operating Permit"): A permit issued by the Board of Health, expiring on December 31st and to be renewed annually, that permits a Registered Marijuana Dispensary to operate within the Town of Arlington. A separate RMD Operating Permit is required for each retail establishment selling marijuana and/or marijuana products and for each location, not being the same address as the retail establishment, where the Registered Marijuana Dispensary is approved by the Massachusetts Department of Public Health to cultivate marijuana or prepare MIPs.

Permit to Operate a Registered Marijuana Dispensary Holder (hereafter referred to as "RMD Operating Permit Holder"): Any not-for-profit entity engaged in the sale of medical marijuana that applies for and receives a RMD Operating Permit.

Personal Caregiver: A person, registered by the Massachusetts Department of Public Health, who is at least 21 years old, who has agreed to assist with a Registered Qualifying Patient's medical use of marijuana, and is not the Registered Qualifying Patient's certifying physician. An employee of a hospice provider, nursing, or medical facility or a visiting nurse, personal care attendant, or home health aide providing care to a Qualifying Patient may serve as a Personal Caregiver, including to patients under 18 years of age as a second caregiver.

Qualifying Patient: A Massachusetts resident 18 years of age or older who has been diagnosed by a Massachusetts licensed certifying physician as having a debilitating medical condition, or a Massachusetts resident under 18 years of age who has been diagnosed by two Massachusetts licensed certifying physicians, at least one of whom is a board-certified pediatrician or board-certified pediatric subspecialist, as having a debilitating medical condition that is also a life-limiting illness, subject to 105 CMR 725.010(J).

Registration Card: An identification card issued by the Massachusetts Department of Public Health, valid for one year from the date of issue, to a Registered Qualifying Patient, Personal Caregiver, or Dispensary Agent. The Registration Card verifies either that a certifying physician has provided a written certification to the Qualifying Patient and the patient has been registered with the Massachusetts Department of Public Health; that a patient has designated the individual as a Personal Caregiver; that a patient has been granted a hardship cultivation registration; or that a Dispensary Agent has been registered with the Massachusetts Department of Public Health and is authorized to work at a Registered Marijuana Dispensary. The Registration Card allows access into appropriate elements of a Massachusetts Department of Public Health-supported, interoperable

database in which detailed information regarding certifications and possession criteria are stored. The Registration Card identifies for the Massachusetts Department of Public Health and law enforcement authorities, those individuals who are exempt from Massachusetts criminal and civil penalties for the medical use of marijuana in compliance with 105 CMR 725.000 and MGL Ch. 369.

Registered Marijuana Dispensary: A not-for-profit entity registered under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered Qualifying Patients or their Personal Caregiver(s). Unless otherwise specified, Registered Marijuana Dispensaries refers to the site(s) of dispensing, cultivation, and preparation of marijuana (for the purpose of this regulation a Medical Marijuana Treatment Facility shall also be called a Registered Marijuana Dispensary).

Registered Qualifying Patient: A Qualifying Patient who has applied for and received a registration card from the Massachusetts Department of Public Health.

Self-Service Display: Any display from which customers may select a marijuana product without assistance from a Dispensary Agent or store personnel.

Smoking: The lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Thirty-Day Supply: That amount of marijuana, or equivalent amount of marijuana in MIPs, that a Registered Qualifying Patient would reasonably be expected to need over a period of 30 calendar days for his or her personal medical use, which is a maximum of 5 ounces.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff, blunt wraps or tobacco in any of its forms.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes marijuana products.

Written Certification: A form submitted to the Massachusetts Department of Public Health by a Massachusetts licensed certifying physician, describing the Qualifying Patient's pertinent symptoms, specifying the patient's debilitating medical condition, and stating that in the physician's professional opinion the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient.

D. Permit to Operate a Registered Marijuana Dispensary:

1. No person shall sell or otherwise distribute marijuana or marijuana products within the Town of Arlington without first obtaining a Permit to Operate a Registered Marijuana Dispensary ("RMD Operating Permit") issued annually by the Board of Health. Only Registered Marijuana Dispensaries with a permanent, non-mobile location in Arlington, meeting zoning restrictions, are eligible to apply for a RMD Operating Permit to maintain a supply of marijuana or marijuana products at the specified location in Arlington.

2. As part of the application process, the applicant will submit to the Board of Health the detailed summary of operating policies and procedures for the Registered Marijuana Dispensary as submitted with their Phase II application per 105 CMR 725.100, including, but not limited to, provisions for security, prevention of

diversion, storage of marijuana, transportation of marijuana, inventory procedures, procedures for quality control and testing of product for potential contaminants, procedures for maintaining confidentiality as required by law, personnel policies, dispensing procedures, record-keeping procedures, plans for patient education, and any plans for patient or Personal Caregiver home-delivery.

3. As part of the RMD Operating Permit application process the applicant will be provided with this regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and understands that under this regulation they are responsible for complying with all local and state regulations pertaining to the operation of the Registered Marijuana Dispensary. Specifically, a violation of any provision of 105 CMR 725.000 or other applicable state regulation constitutes a violation of this regulation, which may be enforced by the Board of Health.

4. Each applicant is required to provide proof of a current Certificate of Registration to Operate a Registered Marijuana Dispensary, issued by the Massachusetts Department of Public Health, before a RMD Operating Permit can be issued.

5. The Board of Health will hold a public hearing for the applicant to speak regarding their initial application. The Board of Health may require the applicant to furnish additional information regarding their application before voting to grant or deny the RMD Operating Permit. The Board will not hold a public hearing for renewal applications.

6. Each RMD must hold an annual community meeting to provide abutters and community residents with an opportunity to comment on the RMD's operating practices, policies and plans. The community meeting shall be advertised by the RMD through direct mail or other written communication to abutters. A notice of the same shall be advertised in the local newspaper. A report outlining the attendance, comments received, and proposed responses and plans to address the comments shall be submitted to the Board with the renewal application.

7. As a condition of RMD Operating Permit issuance, the Registered Marijuana Dispensary agrees to provide to the Board of Health a copy of their Certificate of Registration, annual renewals thereafter, any changes to the business as described in 105 CMR 725.100(F) and current written operating procedures required in 105 CMR 725.105.

8. As a condition of RMD Operating Permit issuance, the Registered Marijuana Dispensary agrees to provide a home delivery service in accordance with 105 CMR 725.000 to patients who demonstrate an inability to access the Registered Marijuana Dispensary.

9. As a condition of RMD Operating Permit issuance, the Registered Marijuana Dispensary agrees to notify the Board of Health orally and in writing within 24 hours of a visit to the premises or request for information by any representative of the Massachusetts Department of Public Health acting in an official capacity. The Registered Marijuana Dispensary shall provide the Board of Health with any reports, written or electronic correspondence, or information from the Department of Public Health on demand or, in any case, within five (5) business days after receipt by the Registered Marijuana Dispensary.

10. No applicant is permitted to sell alcohol, tobacco products and/or nicotine delivery products and must not be in possession of either a tobacco sales permit or a liquor license issued by the Town of Arlington and/or its Board of Health.

11. No applicant is permitted to hold a common victualler license or food service permit issued by the Board of Health for on-premises food consumption.

12. Applicants who wish to prepare or sell edible MIPs at their Registered Marijuana Dispensary must undergo the Board of Health plan review process for food establishments prior to beginning operations. All edible MIPs shall be prepared, handled and stored in accordance with the requirements of 105 CMR 590.000: Minimum Sanitation Standards for Food Establishments at all times during operation.

13. No applicant is permitted to be a Massachusetts lottery dealer.

14. A separate RMD Operating Permit is required for each retail establishment selling marijuana and/or marijuana products and for each location, not being the same address as the retail establishment, where the Registered Marijuana Dispensary is approved by the Massachusetts Department of Public Health to cultivate marijuana or prepare MIPs.

15. The RMD Operating Permit shall be displayed in an open, conspicuous place in view of the public.

16. Permit to Operate a Registered Marijuana Dispensary Holders ("RMD Operating Permit Holders") shall at all times ensure the buildings, structures, physical facilities, vehicles, fixtures and equipment of the Registered Marijuana Dispensary are being maintained in a sanitary condition, in good repair, free from defects, and in every way fit for the use intended so as to prevent the occurrence of any nuisance conditions or other conditions which may endanger or impair health, safety or wellbeing of an occupant or the general public.

17. Applicants shall develop a plan, subject to review and approval by the Board of Health, for the safe and secure storage and disposal of all marijuana waste and refuse. The plan shall ensure all marijuana waste and refuse is rendered unusable and is disposed of in accordance with applicable law.

18. RMD Operating Permit Holders shall at all times be subject to periodic, unannounced inspections conducted by the Board of Health. Denial of access to the Board of Health may be grounds for immediate suspension or revocation of a RMD Operating Permit.

19. Issuance and maintaining a RMD Operating Permit shall be conditioned on the RMD Operating Permit Holder's compliance with any orders issued by the Board of Health to correct any deficiencies or violations identified during an inspection.

20. Issuance and maintaining a RMD Operating Permit shall be conditioned on an applicant's on-going compliance with this regulation, the requirements set forth in 105 CMR 725.000, a violation of which constitutes a violation of this regulation, which may be enforced by the Board of Health, all other current Commonwealth of Massachusetts requirements and policies regarding marijuana sales, as well as all bylaws and zoning bylaws of the Town of Arlington.

21. RMD Operating Permit Holders agree that a Registered Marijuana Dispensary will not open for business before 9:00 am and shall close no later than 8:00 pm daily.

22. A RMD Operating Permit is non-transferable. A new owner of a Registered Marijuana Dispensary must apply for a new RMD Operating Permit. No new RMD Operating Permit will be issued unless and until all outstanding penalties incurred by the previous RMD Operating Permit Holder are satisfied in full.

23. A RMD Operating Permit will not be renewed if the RMD Operating Permit Holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding RMD Operating Permit suspensions.

24. The fee for a RMD Operating Permit shall be determined by the Board of Health annually.

E. Dispensary Agent Permit:

1. No Dispensary Agent or person shall sell or otherwise distribute marijuana or marijuana products at a Registered Marijuana Dispensary within the Town of Arlington without first obtaining a Dispensary Agent Permit issued annually by the Board of Health.

2. As part of the Dispensary Agent Permit application process, the applicant will be provided with this regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and understands that under this regulation they are responsible for complying with all local and state regulations pertaining to the operation of the Registered Marijuana Dispensary. Specifically, a violation of any provision of 105 CMR 725.000 or other applicable state regulation constitutes a violation of this regulation, which may be enforced by the Board of Health.

3. Each applicant is required to provide proof by means of a valid government-issued photographic identification containing the bearer's date of birth that the applicant is 21 years old or older.

4. Each applicant is required to provide proof of a current Dispensary Agent registration, issued by the Massachusetts Department of Public Health, before a Dispensary Agent Permit can be issued.

5. Each applicant is required to provide the Criminal Offender Record Information (CORI) report submitted on their behalf to the Massachusetts Department of Public Health by the Registered Marijuana Dispensary.

6. Issuance and maintaining a Dispensary Agent Permit shall be conditioned on an applicant's on-going compliance with this regulation, the requirements set forth in 105 CMR 725.000, a violation of which constitutes a violation of this regulation, which may be enforced by the Board of Health, as well as all other current Commonwealth of Massachusetts requirements and policies regarding marijuana sales.

7. A Dispensary Agent Permit will not be renewed if the Dispensary Agent Permit Holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding Dispensary Agent Permit suspensions.

8. Dispensary Agents must present their Massachusetts Department of Public Health Registration Card and Dispensary Agent Permit to any law enforcement officer or municipal agent who questions the agent concerning their marijuana-related activities.

9. The fee for a Dispensary Agent Permit shall be determined by the Board of Health annually.

F. Marijuana Sales at Registered Marijuana Dispensaries:

1. No person shall sell marijuana from any location other than at a Registered Marijuana Dispensary that possesses a valid RMD Operating Permit issued by the Board of Health.

2. Registered Marijuana Dispensaries shall only permit Dispensary Agents to transport marijuana or MIPs on their behalf, whether between dispensaries, dispensary sites, or to Registered Qualifying Patients or Personal Caregivers and follow Massachusetts Department of Public Health guidelines found in 725.110(E) which shall be made available to the Arlington Police Department upon request.

3. Registered Marijuana Dispensaries shall permit entry to the Registered Marijuana Dispensary, to specifically engage in activity expressly or by necessary implication permitted by the MGL Ch. 369 and 105 CMR 725.000, to only Registered Qualifying Patients, Personal Caregivers, Dispensary Agents, persons authorized by 105 CMR 725.105(P) and, subject to the requirements of 105 CMR 725.110(C) (4), outside vendors, contractors and visitors.

4. Registered Marijuana Dispensaries shall limit entry to their "Limited Access Areas" to Dispensary Agents and outside vendors, contractors and visitors meeting the requirements found at 105 CMR 725.110(C).

5. Registered Marijuana Dispensaries shall limit sales and/or transactions to quantities of marijuana, or equivalent amounts of marijuana in MIPs, not to exceed a thirty-day supply. A period of time not less than thirty days must elapse before a Registered Qualifying Patient or Personal Caregiver can obtain another thirty day supply from the Registered Marijuana Dispensary.

6. Dispensary Agents shall verify the Registration Card of the Card Holder by means of a valid government-issued photographic identification. No separate identification is required for valid Registration Cards bearing a photograph of the Card Holder.

7. No person shall distribute, or cause to be distributed, any free samples of marijuana or marijuana products. No means, instruments or devices that allow for the redemption of marijuana or marijuana products are prohibited.

8. Registered Marijuana Dispensaries are prohibited from using self-service displays, vending machines or Non-Residential Roll-Your-Own machines. All retail sales of marijuana must be face-to-face between the Dispensary Agent and the Card Holder and occur at the permitted location, unless the Card Holder is the proper recipient of home delivery in accordance with 105 CMR 725.000.

9. The owner or other person in charge of a Registered Marijuana Dispensary shall conspicuously post signage at all entrances indicating that the entry to persons not possessing a valid Registration Card is prohibited. The notice shall be no smaller than 8.5" by 11" and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person approaching the Registered Marijuana Dispensary.

G. Hardship Cultivation Permit:

1. No Registered Qualifying Patient, Personal Caregiver or other person shall cultivate marijuana pursuant to a Hardship Cultivation Registration in accordance with 105 CMR 725.000 within the Town of Arlington without first obtaining a Hardship Cultivation Permit issued annually by the Board of Health.

2. Each applicant is required to provide proof of a current Hardship Cultivation Registration and, where applicable, a current registration card for a Personal Caregiver issued by the Massachusetts Department of Public Health before a Hardship Cultivation Permit can be issued.

3. As part of the Hardship Cultivation Permit application process, Personal Caregivers and Registered Qualifying Patients who cultivate marijuana in the Town of Arlington shall submit a copy of the documents provided to the Massachusetts Department of Public Health as outlined in 105 CMR 725.020(A) to the Board of Health.

4. Each Hardship Cultivation Permit Holder shall at all times ensure the cultivation site is being maintained in a sanitary condition, in good repair, free from defects, and in every way fit for the use intended so as to prevent the occurrence of any nuisance conditions or other conditions which may endanger or impair health, safety or wellbeing of an occupant or the general public.

5. A portable fire extinguisher that complies with the regulations and standards adopted by the State Fire Marshal and applicable law shall be securely mounted at each entrance to the room where the cultivation occurs.

6. Hardship Cultivation Permit Holders shall at all times be subject to cultivation site inspections conducted by the Board of Health. Denial of access to the Board of Health may be grounds for immediate suspension or revocation of a Hardship Cultivation Permit.

7. Issuance and maintaining a Hardship Cultivation Permit shall be conditioned on the Hardship Cultivation Permit Holder's compliance with any orders issued by the Board of Health to correct any deficiencies or violations identified during an inspection.

8. Issuance and maintaining a Hardship Cultivation Permit shall be conditioned on the applicant or Hardship Cultivation Permit Holder's on-going compliance with this regulation, the requirements set forth in 105 CMR 725.000, as well as all bylaws and zoning bylaws of the Town of Arlington.

9. The fee for a Hardship Cultivation Permit shall be determined by the Board of Health annually.

H. Registration Card Holders:

A Registered Qualifying Patient, Personal Caregiver or a Dispensary Agent must notify the Arlington Police Department after he or she discovers that his or her Registration Card has been lost or stolen.

I. Financial Security:

RMD Operating Permit Holders shall provide a non-cancellable surety bond or other form of surety approved by the Board of Health to cover the cost of removal, closure and/or clean-up in the event the Town must remove, close and/or clean-up the Registered Marijuana Dispensary. The amount and form of the surety bond or any other form of surety shall be determined by the Board of Health, but in no event shall exceed more than 150 percent of the cost of removal, closure and/or clean-up. The RMD Operating Permit Holder shall submit a fully inclusive estimate of the costs associated with removal, closure and/or clean-up, prepared by a qualified Hazardous Waste Remediation Contractor.

K. Violations:

1. Upon a finding that a RMD Operating Permit Holder, a Dispensary Agent Permit Holder or a Hardship Cultivation Permit Holder has violated any provision of this regulation, the Board of Health may order, in writing, the person(s) responsible for violating this regulation to correct any violation of the provisions of this regulation within a specified timeframe.

2. It shall be the responsibility of the RMD Operating Permit Holder and the Dispensary Agent Permit Holder to ensure compliance with all sections of this regulation pertaining to his or her distribution and/or cultivation of marijuana and/or marijuana products. The violator shall receive:

    a. In the case of a first violation, a fine of three hundred dollars ($300.00).

    b. In the case of a second violation within 36 months of the date of the current violation, a fine of three hundred dollars ($300.00) and the RMD Operating Permit or Dispensary Agent Permit shall be suspended for seven (7) consecutive business days.

    c. In the case of three or more violations within a 36 month period, a fine of three hundred dollars ($300.00) and the RMD Operating Permit or Dispensary Agent Permit shall be suspended for thirty (30) consecutive business days.

    d. The Board of Health reserves the right to permanently revoke a RMD Operating Permit, Dispensary Agent Permit or Hardship Cultivation Permit for cause.

    e. If a permit holder has obtained a permit or license from any other licensing or permitting authority within the Town of Arlington, the Board of Health shall notify such authority in writing of any violations of this regulation

    f. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the RMD Operating Permit and/or Dispensary Agent Permit.

    g. In addition to the monetary fines set above, any RMD Operating Permit Holder or Dispensary Agent Permit Holder who engages in the sale or distribution of marijuana or marijuana products while his or her RMD Operating Permit or Dispensary Agent Permit is suspended may be subject to the suspension and/or revocation of all Arlington-issued permits and licenses.

    h. The Board of Health shall provide notice of the intent to suspend or revoke a RMD Operating Permit, Dispensary Agent Permit, or Hardship Cultivation Permit, which notice shall contain the reasons therefore and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The RMD Operating Permit Holder, Dispensary Agent Permit Holder, Hardship Cultivation Permit Holder or other involved party shall have an opportunity to be heard at such hearing. At the conclusion of the hearing, the Board of Health shall vote to suspend or revoke the RMD Operating Permit, Dispensary Agent Permit or Hardship Cultivation Permit if cause for such action is found. All involved parties shall be notified in writing of the Board of Health's decision within seven (7) days of the hearing. For purposes of such suspensions or revocations, the Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All marijuana and marijuana products shall be removed from the retail

establishment upon suspension of the RMD Operating Permit. Failure to remove all marijuana and marijuana products shall constitute a separate violation of this regulation.

L. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

M. Enforcement:

Enforcement of this regulation shall be by the Arlington Board of Health or its designated agent(s).

Any resident who desires to register a complaint pursuant to this regulation may do so by contacting the Arlington Board of Health or its designated agent(s) and they shall investigate.

N. Severability:

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

O. Effective Date:

This regulation shall take effect on _____, 2018.

1. _____ 2. _____

Michael Fitzpatrick, DMD Marie Walsh-Condon, MD

3. _____

Kenneth Kohlberg, JD, MPH