



**Town of Arlington
Legal Department**

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To: Select Board

From: Douglas W. Heim, Town Counsel

Date: May 17, 2019

Re: Marijuana HCA Applicant Review

Members of the Select Board, I write to provide a brief comment on the Legal Department's review of the four (4) HCA applications received by this Office within its role as part of the Preliminary Review Team. Please note that I defer to the Chief of Police, Health Director, Director of Planning and Community Development, the Building Inspector's designee (Mr. Ciampa), Town Manager Department, and the Marijuana Study Group participants for qualitative assessments, comments, and questions in their respective areas of expertise. In summary, within my role as a Preliminary Review Team member, I have no objections to any of the applicants, but note questions and potential limitations to be considered as outlined below.

Review of Corporate Structures and Officers

This Office was able to confirm the majority of information disclosed by each of the four applicants with respect to their representations about their corporate structure, officers, licenses, regulatory compliance information, and zoning compliance information given the time and resources available.

I note for the general public's understanding, that the reviews conducted by all members of the Preliminary Review Team are preliminary and supplemental to the Cannabis Control Commissions' more extensive background and vetting processes required for all state license applicants, similar to the review the Alcohol Beverage Control Commission conducts for alcohol

license applicants. Hence, for those applicants who hold provisional or final licenses as cultivators, RMDs, or retailers, the CCC has already conducted extensive background checks. For those applicants who do not yet possess such licenses, the CCC will conduct such checks pursuant to 935 CMR 500.101, including individual officer background checks (CORI checks, authorizations for tax returns, etc.) as well as certifications that corporate applicant funds were legally obtained and disclosures of past and present business interests have been provided.

All of the applicants have officers who are currently or were recently associated with a wide variety of businesses both in Massachusetts and/or in other states, which is unsurprising given the entrepreneurial facets of opening what remain novel businesses in Arlington. Those business interests range from associated entities for the assumption of capital debt relevant to proposed the retail establishment or out-of-state affiliated entities for the same kind of business (Calyx Peak and Apothca for example), to entirely unrelated organizations and enterprises associated with the personal and business goals of individual officers.

In sum, this Office has found no readily identifiable indication of concern about any of the applicants, though it may be advisable to corroborate certain information or ask questions of each applicant at the Board's meeting.

Restrictions on the Number of Licenses

Massachusetts marijuana laws cap the number of Massachusetts licenses any person or entity may hold to three (3) of each kind (i.e. no more than 3 adult-use retail, 3 medical, 3 cultivation, 3 testing, etc.). As the Board may recall, recent reporting has registered concerns regarding efforts by two operators – Sea Hunter Therapeutics and Acreage Holdings to possess more than three licenses of a specific type (i.e. Registered Marijuana Dispensary (“RMD”)) through their interests and holdings in subsidiary companies or other business arrangements. None of the present applicants has any discoverable relationship with either Sea Hunter or Acreage, though it is advisable to directly inquire with each.

Apothca, Inc. (also known as the Massachusetts Patient Foundation), presently holds three RMD licenses (Arlington, Lynn, and yet to be opened location in Boston), a cultivation and processing license (Fitchburg), and to my understanding seeks three *provisional* recreational licenses for the same three RMD locations, which if successful would place them at the cap for both RMDs and adult-use retail. The Board should confirm same with Apothca.

MetroHarvest, Inc. presently holds no licenses in the Commonwealth. As set forth in their application, they are however affiliated with Northeast Alternatives Inc., which to my understanding will provide product inventory, training, and other consulting services. Northeast Alternatives presently holds an adult-use retailer license in Fall River, and reports that it will open two additional adult-use retail establishments (Lowell, and Boston Metro area) soon, which would place them at the cap of 3 adult-use retail licenses. Such a cap does not apply to MetroHarvest Inc., but the Board should garner further detail about the relationship between these two entities.

Site Control

Eskar, LLC, MetroHarvest Inc., and Apothca, Inc., have all satisfactorily established site control over their respective locations. To my understanding Calyx Peak of MA, Inc., was unable to do so by the application deadline. It is within the Board's discretion to allow Calyx Peak to present their proposal to you, and further, to grant an HCA *if* Calyx Peak is able to establish site control as required by the process before Monday's meeting. However, I do not advise the Board to grant an HCA without confirming site control, particularly in a competitive applicant pool.

HCA Proposals

Each of the proposed Host Community Agreements themselves is responsive and have respective merits in terms of proposed terms. Permit me to briefly comment however on two issues.

First, several applicants have proposed confidentiality clauses or non-disclosure clauses. Even as these proposed terms recognize that the Massachusetts Public Records Laws may abridge such clauses, I am concerned about placing the Town in a posture of choosing between the public records laws' requirements and the terms of confidentiality agreements. Applicants should be advised of the Town's commitment to public record transparency and if successful in being awarded an HCA, be prepared to negotiate terms accordingly.

Second, per the Board's HCA Application Process and Criteria policy, I do not advise the Board consider additional financial incentives beyond the 3% of gross sales community impact fee in accordance with the CCC's guidance and M.G.L. c. 94G sec. 3(d), which provides 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."

I look forward to answering any questions the Board may have and to hearing the presentations of each of the applicants.