



**Town of Arlington
Legal Department**

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To: Select Board
From: Douglas W. Heim, Town Counsel
Date: October 1, 2020
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 two (2) HCA applications received by this Office within its role as part of the Preliminary Review Team. Please note that I defer to the Department of Planning and Community Development, the Health Department, the Marijuana Study Group participants and other Town departments 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 applicants before you 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 do not yet possess full 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.

Each 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 throughout the Commonwealth. Those business interests range from associated entities for the assumption of capital debt relevant to proposed retail establishments, or out-of-state affiliated entities for the same kind of business 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 as owners or operators of these enterprises or other businesses generally, though the Board is well within its purview to ask questions about the experience, background and interests of officers of each applicant at the Board's hearing.

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.). To the best of this Office's ability to examine applicant information, neither applicant appears to possess or in the process of acquiring more than the maximum number of licenses within the Commonwealth.

Calyx Peak of MA certifies that none of its ownership possesses *a present* cannabis permanent license in the Commonwealth of Massachusetts. As set forth in their application, Calyx Peak of MA has acquired two provisional licenses for product cultivation and manufacturing in Worcester, MA, and has also entered into a Host Community Agreement with the City of Worcester. They are also seeking an additional retail license in Swampscott, MA, and the Select Board may wish to inquire about the status of same.

Calyx's parent company also owns and operates cultivation, manufacturing and retail licenses in California, cultivation and manufacturing licenses in Ohio, and a cultivation license in Nevada, as well as a provisional license for manufacturing and retail in Missouri.

The Human Connection, LLC presently holds no licenses in the Commonwealth, though its owner in a sole proprietorship, personally owns a minority interest in Debilitating Medical Condition Treatment Centers, Inc., Vertically Integrated Medical Marijuana Treatment Center, which holds or is seeking cultivation, processing, and/or retail licenses in several communities in Western Massachusetts. It does not appear that such licenses would impact The Human Connection, or Mr. Glanz-Berger's ability to hold a retail license in Arlington.

Site Control & Zoning Compliance

Both applicants have satisfactorily established site control over their respective locations. The Human Connection has evidenced site control in two locations – 369 Massachusetts Avenue and 23-25 Massachusetts Avenue. However, 369 Massachusetts Avenue is within a B-2 Zoning District, which does not presently allow for siting of marijuana establishments. Meanwhile, 23-35 Massachusetts Avenue is within an allowable district (B-2A), however the applicant has not identified which building within 23-35 the Massachusetts Avenue development is proposed to site the establishment. More importantly, to this Office’s understanding, the parcel 101,096 square foot parcel measured from property line to property line is within 2,000 feet of a pending marijuana establishment located at 23 Broadway – Eskar, LLC.

It is recommended that the Board inquire both with respect to which specific building within 23-35 is the proposed site of the establishment, and confirm with the Inspectional Services and/or the Department of Planning and Community Development that the site is a feasible location because the Arlington Redevelopment Authority is not authorized to waive the 2,000 foot density buffer between marijuana establishments under Section 8.3.B(3) of the Zoning Bylaw.

HCA Proposals

Each of the proposed Host Community Agreements themselves is responsive and articulate thoughtful provisions to govern the relationship between the parties and the Town. While the Town reserves the right to negotiate terms further at the Board’s discretion, both applicants have presented solid draft agreements.

Permit me to note however with respect to confidentiality or non-disclosure clauses, even as proposed terms may recognize that the Massachusetts Public Records Laws may abridge such clauses, applicants, the Town does not generally place itself in the position 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 and HCA, be prepared to negotiate terms accordingly.

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