

November 2021



## Office of Internal Audit

### Why We Did This Review

We performed this review at the request of City Councilor Justin Hurst.

### What We Recommend

We made the following recommendations:

- The City's Law department implement a quality control system to protect the integrity of the selection process. In particular, a person independent of the record keeping function should review the scores and related score sheets to ensure for accuracy and completeness and ensure all relevant documents are adequately maintained.
- The Law department to document their position relative to marijuana transportation applicant's noncompliance with the City's zoning regulation and work with City Council to amend the Marijuana zoning ordinance for Marijuana transportation companies.
- The City marijuana ordinance be amended to clearly allow for additional members to be added to the advisory committee by the Mayor.

(Continued on page 2)

# Review of the City's Cannabis Company Selection Process Executive Summary

## Background

In 2016, the state of Massachusetts authorized the limited adult use of marijuana and the licensing of marijuana establishments. In 2018 the Cannabis Control Commission (the Commission) in Massachusetts was established to regulate adult use marijuana establishments. In accordance with cannabis laws in Massachusetts, municipalities are allowed to adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments. The City of Springfield's (City) marijuana ordinance sets forth regulations for marijuana establishments. Also, in accordance with the cannabis laws in Massachusetts, a marijuana establishment must execute a host community agreement (HCA) with the municipality in which it intends to be located.

The City had two cannabis company selection cycles, Phase 1 and Phase 2, in which cannabis companies were awarded host community agreements. During Phase 1 and Phase 2, the City awarded 4 and 6 host community agreements, respectively, to marijuana establishments.

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## Objectives and Scope

The objective of this review was to determine whether the City's process for selection of cannabis companies for Host Community Awards complied with the cannabis regulations in Massachusetts.

Our review covered Phases 1 and 2 of the City's cannabis company selection cycles, with the exception of the City's scores assigned to cannabis company applicants (Applicants) during Phase 1. For Phase 1, certain Applicant score sheets, which were completed by Selection Committee members, were unavailable; and certain information could not be clarified with the employee responsible for tallying the Applicants' scores for Phase 1 (Phase 1 Administrator) due to their resignation from the City during the review. As such, we are unable to provide any assurance on the completeness and accuracy of the scores used to rank the Applicants during Phase 1.

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**What We Recommend (continued)**

For more information, contact Yong No at (413)784-4844 or yno@springfieldcityhall.com.

**What We Found**

- There were errors in tallying the scores of Applicants during Phase 2, resulting in an erroneous score for an Applicant who potentially would have been awarded a host community agreement had it not been for the erroneous score.
  - A marijuana transportation company applicant during Phase 2 was awarded a host community agreement despite its noncompliance with the City's marijuana zoning ordinance.
  - The composition of the Selection Committee to review cannabis company proposals during Phase 1 and Phase 2 did not comply with the City's marijuana ordinance.
  - For Phase 1, critical documents, including Applicants' score sheets, could not be located; and certain information provided could not be clarified by the Phase 1 Administrator, both of which resulted in a scope limitation for our review of the Applicants' scores.
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## INTRODUCTION

Chapter 468 of the Acts of 2008 authorizes the Director of Internal Audit to examine the records of the City and its departments to prevent and detect waste, fraud and abuse and to improve the efficiency, effectiveness and quality of public services provided in and by the City. In accordance with this legislation, all offices and employees of officers, boards, commissions, agencies and other units of City government are required to comply with requests for information or access to systems and records by the Office of Internal Audit (OIA). The following review aligns the authority and goals of the OIA with those of the City. Specifically, this audit addresses the City's values related to accountability such as integrity, fiscal responsibility and transparent practices. The audit also supports the City's strategic priorities ensuring operational excellence, fiscal health and sustainability in all divisions, departments, programs and activities.

This report is not intended to be an adverse reflection of the City or of its vendors. The intent is for City management to utilize these findings and recommendations to help in making future well-informed strategic decisions while ultimately meeting City objectives.

## BACKGROUND

In 2016, the state of Massachusetts authorized the limited adult use of marijuana and the licensing of marijuana establishments. In 2018 the Cannabis Control Commission (the Commission) in Massachusetts was established to regulate adult use marijuana establishments. The Commission promulgates statewide regulations to address public health issues, industry issues, and market participation for communities including women, minority, and veteran-owned businesses. The Commission also approves applications from candidates for licenses and can revoke or suspend a license. As part of the regulations established for regulating marijuana establishments in Massachusetts, municipalities are allowed to adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments. The City of Springfield's marijuana ordinance sets forth regulations for marijuana establishments, including establishing caps on retail licenses, types of marijuana licenses, e.g., cultivators, retail, transport, and zoning requirements<sup>1</sup>. In addition, the City's marijuana ordinance requires a special permit application from a marijuana establishment, which the City Council approves, and also requires each marijuana establishment to obtain an operating permit from the City's Health department<sup>2</sup>. The City of Springfield adopted a local tax by collecting a 3% tax on the sales of marijuana by a marijuana retailer to a consumer.

Under Massachusetts General Laws, a marijuana establishment must execute a host community agreement (HCA) with the municipality in which it intends to be located. Under the agreement, a municipality is permitted to assess a community impact fee of up to 3% of the marijuana establishment's annual revenue for a term of no more than 5 years<sup>3</sup>.

In addition, Massachusetts General Laws require the Commission to prioritize review and licensing decisions for applicants who demonstrate experience in or business practices that promote economic empowerment in communities disproportionately impacted by high rates of arrest and incarceration for offenses of previous

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<sup>1</sup> City of Springfield Ordinance Section 245-6

<sup>2</sup> City of Springfield Ordinance Section 245-7

<sup>3</sup> MGL c. 94G, Section 3 (d)



cannabis laws and for small businesses and companies led by people of color, women, veterans, and farmers<sup>4</sup>. In accordance with this mandate, the Commission recommends, among other things, the following for municipalities when deciding which companies to negotiate host community agreements:

- Implement an objective, transparent selection process focused on repairing past inequities by prioritizing review for state designated Economic Empowerment applicants<sup>5</sup>.
- Consider preferences for state- designated Social Equity Program participants, or applications from companies owned by marginalized groups<sup>6</sup>.

In 2019, the City awarded four HCAs during Phase I, which included one minority/women owned business applicant. In 2021, the City awarded nine HCAs during Phase II, which included one Economic Empowered applicant, two Social Equity applicants, and three minority/women owned business applicants. The RFP/Qs for both phases were posted on the City's website and Commbuys, the state's online procurement platform.

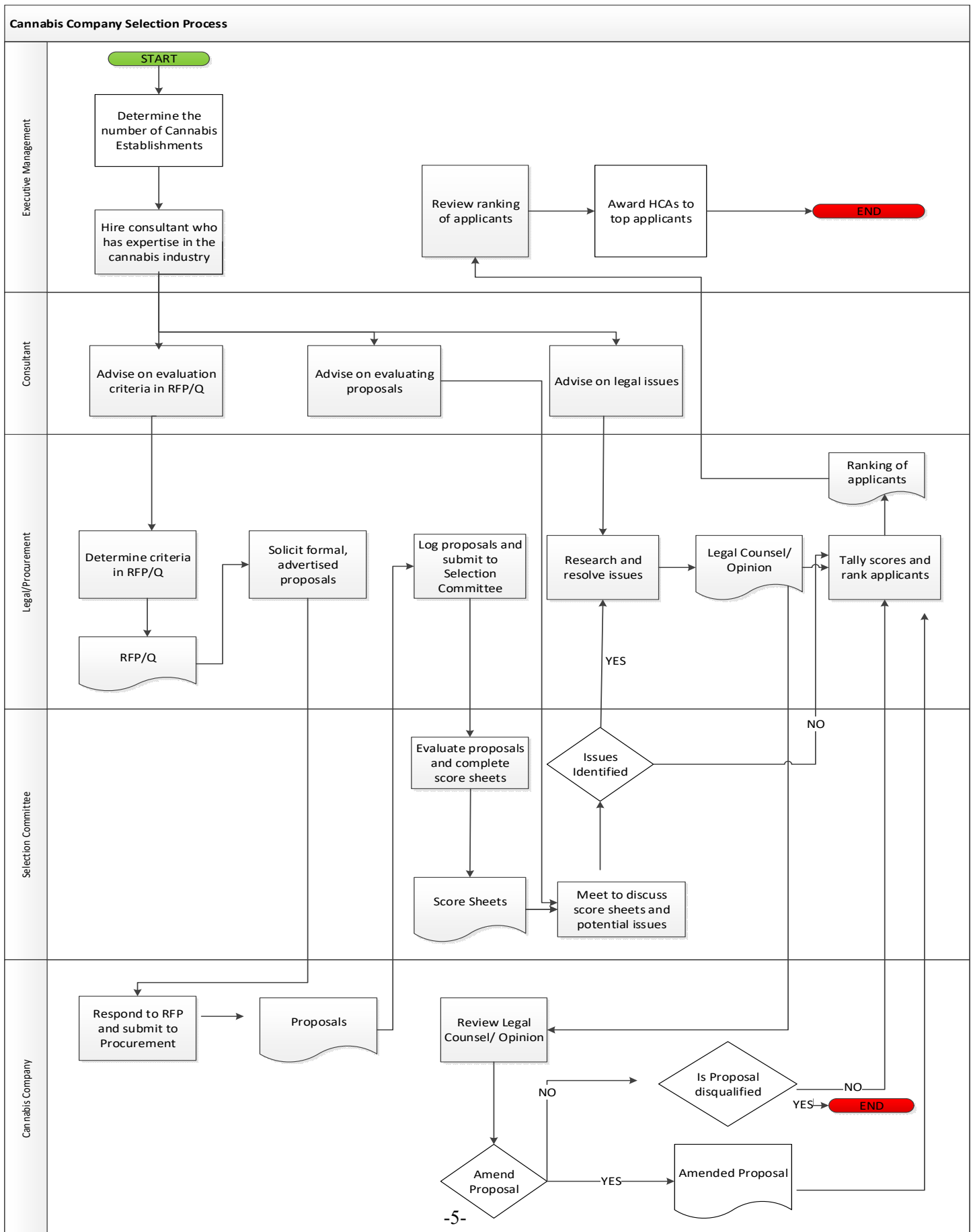
The City's cannabis company selection process for both phases is described in the following flowchart:

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<sup>4</sup> MGL c 94G, section 4a ½, iv

<sup>5</sup> Cannabis Control Commission *Guidance on Equitable Cannabis Policies for Municipalities*

<sup>6</sup> Cannabis Control Commission *Guidance on Equitable Cannabis Policies for Municipalities*





In July 2021, the Springfield Republican reported that a cannabis cultivator applicant and City Councilor Hurst alleged that a marijuana cultivator applicant who was awarded a host community award during the Phase II did not meet the zoning buffer requirements as promulgated by the City's zoning ordinance. As a result, City Councilor Hurst requested that the Office of Internal Audit review the process the City used to award HCAs to ensure the cannabis company selection process complied with City ordinances and Massachusetts General Laws.

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

### **Objective**

The objective of this review was to determine whether the City's process for selection of cannabis companies to award HCA awards complied with the cannabis regulations in Massachusetts.

### **Scope**

Our review covered Phases 1 and 2 of the City's cannabis company selection process cycles (Phase 1 and Phase 2, respectively), with the exception of the City's scores assigned to cannabis company applicants during Phase 1. For Phase 1, certain Applicant score sheets, which were completed by Selection Committee members, were unavailable; and certain information could not be clarified with the employee responsible for tallying the Applicants' scores for Phase 1 (Phase 1 Administrator) due to their resignation from the City during the review. As such, we are unable to provide any assurance on the completeness and accuracy of the scores used to rank the Applicants during Phase 1.

### **Methodology**

To accomplish our objectives, we performed the following procedures:

- Review cannabis regulations in Massachusetts
- Review request for proposals and qualifications (RFP/Qs),
- Review cannabis company applicants' proposals,
- Interview members of the Selection Committee,
- Interview City employees,
- Review process of evaluating cannabis companies, including score sheets, and host community agreements,
- Interview/research other municipalities in Massachusetts to understand their processes in awarding cannabis host agreements, promoting cannabis RFP/Qs to minority, and women-owned/operated enterprises,
- Test submitted proposals against procedural requirements, and
- Perform other procedures as deemed necessary.

Our findings and related recommendations are in the following sections of the report. The Law Department was given the opportunity to respond to the findings. The departmental responses are incorporated verbatim into the report following each finding and recommendation.



**FINDINGS AND RECOMMENDATIONS**

Finding No.	Finding	Finding Description	Recommendations	Management Response
1.	There were errors in tallying the scores of Applicants during Phase 2.	<p>For Phase 2, the City received 24 proposals for 9 HCAs. The details are as follows:</p> <ul style="list-style-type: none"> <li>• 17 proposals for six HCAs allocated to retail establishments,</li> <li>• Five proposals for one HCA allocated to a cultivation establishment,</li> <li>• One proposal for one HCA allocated to a transportation establishment, and</li> <li>• One proposal for one HCA allocated to a courier establishment.</li> </ul> <p>The RFP/Q consisted of 13 evaluation criteria, with score values ranging between 0 and 3 points, for Phase 1 and 8 evaluation criteria for Phase 2. The RFP/Qs were scored using a scoring framework developed internally.</p> <p>In reviewing the scores used to rank the Applicants, we found the following:</p> <ul style="list-style-type: none"> <li>• The Phase 2 Administrator made errors in tallying the scores of 8 applicants. Most of the errors did not affect the applicant’s ranking.</li> <li>• Of the 17 retail applicants, only the top 6 ranked applicants were awarded host community agreement contracts. A scoring error on one retail proposal resulted in the Phase 2 Administrator mistakenly ranking it</li> </ul>	The City’s Law department should implement a quality control system to protect the integrity of the selection process. In particular, a person independent of the record keeping function should review the scores and related score sheets to ensure accuracy and completeness.	See Exhibit A for Management Response.



Finding No.	Finding	Finding Description	Recommendations	Management Response
		seventh when it should have been ranked fifth.		
2.	A marijuana transportation company applicant during Phase 2 was awarded a host community agreement despite its noncompliance with the City's marijuana zoning ordinance.	<p>In accordance with City's zoning ordinance, no marijuana establishment, except for an Adult Use Marijuana Retailer, shall be located within 250 feet of a residence, a building containing residences or a residential zoning district<sup>7</sup>. Per review of the site plan of a marijuana transportation applicant, their location appears to violate this ordinance.</p> <p>Additionally, the evaluation criteria in the RFP/Q requires that an applicant certify that they are in compliance with state and City zoning regulations. The OIA noted no such certification of compliance from this applicant. When interviewed, the City's Law department believed that this ordinance should not apply to a transportation company as the transportation company has no custody of marijuana on their premises. The City is currently working on amending the ordinance to exclude marijuana transportation companies from the buffer zone requirement.</p>	We recommend that the City officials work with the Law department to document their position relative to this applicant's noncompliance with the City's zoning regulation and work with the City Council to amend the Marijuana zoning ordinance for Marijuana transportation companies.	See Exhibit A for Management Response.

<sup>7</sup> City of Springfield Zoning Ordinance 4.7.114, A(4)





Finding No.	Finding	Finding Description	Recommendations	Management Response
3.	The composition of the Selection Committee to review cannabis company proposals during Phase 1 and Phase 2 did not technically comply with City's marijuana ordinance.	<p>The City's marijuana ordinance states each host community application shall be reviewed by an advisory committee consisting of the following nine members:</p> <ul style="list-style-type: none"> <li>• The Mayor or his designee,</li> <li>• The Health Commissioner or her designee,</li> <li>• The City Solicitor or his designee,</li> <li>• The Police Commissioner or her designee,</li> <li>• The Code Enforcement Commissioner or his designee,</li> <li>• DPW Director or his designee,</li> <li>• Director of Planning or his designee,</li> <li>• CAFO or his designee, and</li> <li>• The Fire Commissioner or his designee<sup>8</sup>.</li> </ul> <p>We understand that the advisory committee referred to in the above is also known as the Selection Committee during Phase 1 and 2 of the cannabis company selection cycles. The Selection Committee not only consisted of the members as defined in the City's marijuana ordinance<sup>9</sup>, but it also included a member from the City Council and a member from the Procurement office during Phase 1 and a member from the City Council and an additional member from the Planning department during Phase 2. When interviewed, the Phase 2 Administrator</p>	We recommend that the City marijuana ordinance be amended to clearly allow for additional members to be added to the advisory committee by the Mayor.	See Exhibit A for Management Response.

<sup>8</sup> City of Springfield Ordinance 245-6 B (1)

<sup>9</sup> City of Springfield Ordinance 245-6 B (1)



Finding No.	Finding	Finding Description	Recommendations	Management Response
		indicated that the City marijuana ordinance does not preclude additional members from being added.		
4.	Critical documents during Phase 1 could be not be located, and those that were provided could not be clarified with the Phase 1 Administrator.	<p>During the review, we noted that the following documents from Phase 1 were missing:</p> <ul style="list-style-type: none"> <li>• 16 score sheets out of a total of 125 completed by five Selection Committee members.</li> <li>• 8 pages from 7 score sheets out of a total of 50 completed by two Selection Committee members.</li> </ul> <p>When interviewed, the Phase 1 Administrator, who was responsible for tallying the Applicants’ scores, indicated the following:</p> <ul style="list-style-type: none"> <li>• The Selection Committee members were instructed to turn in their score sheets after the Selection Committee meetings during which committee members' scores were discussed and recorded by the Administrator.</li> <li>• The Phase 1 Administrator followed up on any missing score sheets.</li> <li>• Some of Selection Committee members complied with the request to turn in missing score sheets and there were others that did not.</li> </ul> <p>Subsequent to the OIA’s communication of the missing information to the Phase 1 Administrator, we were provided the missing</p>	<p>See recommendation in Finding 1 above.</p> <p>In addition, for future cannabis company selection cycles, we recommend that the Law department develop a checklist that includes procedures for obtaining all documents used in the process, including score sheets, and for maintaining these documents in accordance to the state’s public records retention law.</p>	See Exhibit A for Management Response.



Finding No.	Finding	Finding Description	Recommendations	Management Response
		<p>score sheets on the shared storage drive with the Law department on the City’s network. It was unclear whether these score sheets were the Selection Committee score sheets or the Phase 1 Administrator’s notes. The Phase 1 Administrator was in the process of providing the OIA with their notes (to record scores from Selection Committee members) when the OIA last communicated with them. During the review, the Phase 1 Administrator resigned from the City; and as such, the OIA could not clarify the source of this information.</p> <p>Failure to keep copies of records leads to decreased internal controls, compromises a proper audit trail, and limits the transparency in the process. In addition, the Massachusetts records retention law requires that public documents be maintained for seven years<sup>10</sup>.</p> <p>Without supporting documentation and clarification of the additional information provided, we could neither verify the accuracy of the scores to rank Phase 1 applicants nor ensure its completeness.</p>		

<sup>10</sup> MGL, c.66, Section 8

# EXHIBIT A

LAW DEPARTMENT  
CITY OF SPRINGFIELD  
CITY HALL, ROOM 210, 2<sup>nd</sup> FLOOR  
36 COURT ST  
SPRINGFIELD, MA 01103  
TELEPHONE: (413) 787-6085  
FACSIMILE: (413) 787-6173



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## INTEROFFICE MEMORANDUM

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**TO:** Yong No, Internal Auditor  
**FROM:** Edward M. Pikula, City Solicitor  
**DATE:** November 24, 2021  
**RE:** Draft Phase I and II Cannabis Audit

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This memorandum is in response to your request for comment on the draft audit provided to me November 10, 2021, entitled "Review of the City's Cannabis Company Selection Process".

That draft made the following findings, which are summarized below, and a response is provided for each one.

1. **FINDING:** There were errors in tallying the scores of Applicants during Phase 2, resulting in an erroneous score for an Applicant who potentially would have been awarded a host community agreement had it not been for the erroneous score.

**RESPONSE:** The error alleged could not be verified by this office. The personnel who participated in the tallying have left the City's employment to start careers elsewhere. This office reached out to them and both employees disputed that any tallying error occurred. According to the employee from procurement, the numbers were triple checked and then verified by an employee in procurement who did not participate in the evaluation.

However, the information obtained by the Internal Auditor to conduct his tally did include supplemental information that was not reviewed by the former employees, as such, it is plausible that an error occurred. Whether or not an error actually occurred could not be determined with certainty. Even assuming the error did occur, it is somewhat misleading to state that "an Applicant who potentially would have been awarded a host community agreement had it not been for the erroneous score".

The scoring process only provided a recommendation to the Mayor as to whether to award an HCA to any applicant. As noted in RFP/Q 21-107, a proposal was required to be completed by applicants for the "development, construction and operation of a Marijuana Establishment in the City in accordance with" Mass. Gen. Laws Ann. ch. 94G, § 1 et seq.; 935 Mass. Code Regs. 500.101(1)(a)(8), but were "not binding".

## EXHIBIT A

The decision of whether to issue an HCA is solely within the authority and discretion of the Mayor. See M.G.L. c. 43, §29. Without the written approval of the mayor no HCA contract can be made or executed within the meaning of that statute. Lumarose Equipment Corp. v. City of Springfield, 15 Mass. App. Ct. 517, 521 (1983).

Because a mayor may use discretion in determining whether to enter into an HCA with a prospective retail establishment, mandamus relief is not available. Additionally, a one-point differential out of approximately 120 points is not significant under the circumstances here. A rational exists as the basis for choosing one applicant over the other for the exercise of such discretion. For example, whether, in the judgment of the Mayor, a particular location was better suited than another, due to better parking, or less potential impact on traffic, is exclusively within the purview of the Mayor and a reasonable basis for exercising mayoral discretion.

As noted by the SJC, relief is not available in a situation similar to the circumstances here where an applicant for a marijuana license might seek to require city to enter into a host community agreement (HCA) partner agreement, since the Mayor could use his discretion in determining whether to enter an HCA with a prospective retail establishment. Mederi, Inc. v. City of Salem, 488 Mass. 60 (2021). A decision not to enter into an HCA would not be arbitrary or capricious under such circumstances. Compare INSA, Inc. v. Hurst, et al, Hampden County Superior Court, Civil Action 2079CV00007, (2021)(ordering issuance of special permit due to arbitrary and capricious denial).

Nothing in G. L. c. 94G, § 3, imposes a duty on a City or Town to enter into an HCA with a prospective recreational marijuana establishment simply because that establishment is able to fulfill the municipality's HCA requirements. Indeed, G. L. c. 94G, § 3 (d), the provision governing HCAs, merely provides that a prospective marijuana establishment must enter into an HCA with a host community before it can operate.

2. FINDING: A marijuana transportation company applicant during Phase 2 was awarded a host community agreement despite its noncompliance with the City's marijuana zoning ordinance.

RESPONSE: City of Springfield Zoning Ordinance 4.7.114, A(4)requires a 250 foot buffer from a residence. However, this provision would not be legally enforceable against the applicant at issue here. While the applicant is required to be licensed by the state Cannabis Control Commission, the business would not have occasion to have any custody or control of cannabis on the premises.

In essence, while the business is licensed for cannabis, the regulation for location in question is no different than any other dispatch office. Attempting to enforce the Ordinance provisions in this situation would be arbitrary or capricious when a non-cannabis company, operating no differently, would not need to meet the buffer requirement. This scenario was not contemplated at the time the original Ordinance was passed. As such, the Ordinance should be revised to note it is not applicable in this type of situation in order to avoid a future lawsuit. The Ordinance has several areas which need amending due to changes in the state licensing laws, and this is one of them.

## EXHIBIT A

3. FINDING: The composition of the Selection Committee to review cannabis company proposals during Phase 1 and Phase 2 did not comply with the City's marijuana ordinance.

RESPONSE: While the Ordinance does not require the participation of a City Council member, there is no law prohibiting the inclusion of a City Council member. It is common for the City to add a City Council member to an evaluation committee considering responses to an RFQ/P during a procurement process. The inclusion of a City Council member on the evaluation committee utilized here was not improper.

4. FINDING: For Phase 1, critical documents, including Applicants' score sheets, could not be located; and certain information provided could not be clarified by the Phase 1 Administrator, both of which resulted in a scope limitation for our review of the Applicants' scores.

RESPONSE: The documents in question should be part of the City's Official records of the City Clerk or Procurement office. The Law Department will work with those offices to draft a checklist and process to assure the retention of such records in any future.