


TO: Tim McInerney, Town Administrator
CC: Joe Laydon, Town Planner
FROM: Ginny Sinkel Kremer, Esq., Town Counsel 
DATE: November 25, 2019
RE: Recreational Marijuana Establishments

As you are aware, Article 39, § 2 of Grafton's General By Laws provides that the number of Recreational Marijuana Establishments ("RMEs") that are permitted in Grafton is "limited to 20% of the number of licenses issued" pursuant to G.L. c. 138 § 15." As a result, based on your calculations of licenses issued under § 15, unless and until the by law is amended, a maximum of two RMEs may be sited in Grafton. Although the law allows municipalities to enact such limitations, it gives no guidance on when during the application process a municipality should or must enforce local limits. Although we have sought guidance from the Cannabis Control Commission (hereafter, "the CCC" or "the Commission"), they have declined to opine on this issue. Thus, you have requested an opinion on when during an application process the Town should seek to enforce its current limit of RMEs. I have reviewed the general laws and materials available on the Commission's website. After consultation with the Town Planner, we have determined the following.

When an entity files an application with the CCC for a state license to operate an RME, that applicant must demonstrate two things with respect to the municipality in which they propose to operate the RME. Specifically, an applicants must demonstrate that:

- It has held a community outreach meeting in the municipality within the past six months; and
- It has entered into a Host Community Agreement with the municipality.

Once the CCC determines that an application is complete, including the provision of the above two certifications, it will provide notice to the municipality of its determination. The municipality then has sixty (60) days to notify the Commission that the applicant is not in compliance with local ordinances or bylaws.¹ If the municipality does not respond within 60 days, the applicant will be deemed by the CCC to be in compliance with all applicable local ordinances and bylaws.

In my opinion, it is only after the CCC provides notification that an application is complete that the Town can notify the CCC of any lack of compliance with a local law, including Art. 39, § 2. Thus, in addition to an examination of compliance with the Zoning By Law for the proposed location, the Town should determine whether the

¹ This does not include any required local permits. Specifically, if a local by law requires local permitting or licensing, the applicant does not need to have the permitting or licensing granted at the time the CCC issues notice to a municipality. Instead, the municipality must only notify the CCC whether such permitting or licensing is available for the particular proposed location.

application would comply with the local limitation of RMEs, which again is currently two.² Thus, to the extent that there are already two complete applications that otherwise comply with local law, notification that a third application is complete would require the Town to notify the Commission that such an application is not in compliance with Art. 39, § 2 as it would result in more RMEs than the local limit allows.

We believe this approach is consistent with the law as it has so far developed. We also believe that this approach strikes an appropriate balance between the interests of the Town and the interests of applicants. Specifically, if the Select Board refused to sign a Host Community Agreement presented by an applicant because it had already signed two such agreements, that refusal could serve to block at the outset an applicant who could otherwise successfully locate an RME in Grafton. Meanwhile, since the requirements of presenting an HCA to the Select Board are minimal, there are many reasons that an application could falter after clearing that first low hurdle. In that case, a potentially successful applicant may have decided to locate in a different municipality, and Grafton will have lost the opportunity to serve as the host to that successful applicant. Conversely, it would do a disservice to applicants if the Town waited until the end of the state licensing process to assert its local limit. In that case, more than two applicants could invest substantial time and capital without having control over the date the Commission awards licenses. Thus, it seems that the Town's required notification to the Commission regarding the local limit with respect to a third complete application would allow prospective applicants to proceed past the starting point but not get too far into the process before having to yield to the Town's validly enacted local limitation on the number of RMEs permitted. Additionally, if the Town notifies the CCC that a completed application is out of compliance with the local limit, that will put the issue squarely before the state agency, which at that point will hopefully offer guidance to both the Town and the applicant on how to proceed.

If you would like further information on this issue, please do not hesitate to ask.

² There is nothing that prohibits Town Meeting from altering the current limitation at any future Town Meeting.