

When it Comes to Pot Shops, Local Control Wins

On July 20, 2021, the Supreme Judicial Court confirmed that municipalities enjoy substantial deference in dealing with marijuana retailers applying for Host Community Agreements (“HCA”). In *Mederi, Inc. v. City of Salem*, the SJC affirmed the dismissal of a suit brought by Mederi, whose HCA application was denied after Salem determined that other applicants “appeared to be the strongest positioned to open, succeed, and provide minimal or manageable impact to the surrounding neighborhood.” Mederi’s suit sought a court order compelling Salem to award it an HCA and alleged that (1) Salem’s application decision was arbitrary and capricious, and (2) the application process itself was unlawful.

Under Massachusetts General Laws Chapter 94G, recreational marijuana retailers are required to obtain an HCA with a municipality before applying for a license from the Cannabis Control Commission (“CCC”). The Commission has certain requirements for reviewing licensing applications, but there are none imposed on municipalities reviewing HCA applications. Cities and towns are only encouraged to “carefully consider” an applicant’s impact on and benefits to the community.

The SJC held that this statutory and regulatory silence means that municipalities are under no legal duty to select or even prioritize any particular HCA applicant and that HCA decisions are valid so long as there is a “rational basis” for them. The Court found that the Salem committee’s memo to the mayor, describing the basis for its recommendations, sufficed to show a rational basis for denying Mederi’s HCA application. Mederi also claimed that Salem created a “pay-to-play” scheme, in that they only selected applicants who promised significant financial benefits to the city. However, the Court found this claim unsubstantiated, especially since another denied applicant promised similar financial benefits as the selected retailers.

The takeaway for cities and towns in the Commonwealth is that they have significant leeway in determining, among other things, the number of marijuana retailers they permit, the criteria they consider, and their conduct of the application process. Chapter 94G and CCC regulations are scant on procedural requirements for HCA decisions, and Massachusetts courts will uphold a municipality’s decision so long as it is reasonably articulated, and there is no evidence of improper conduct.

About the Co-Author



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