

Dear Mayor Coogan, Corporate Counsel Rumsey,
City Council, and Mr. Fiola,

I'm writing on behalf of my client, City Slickers
LLC to address the serious concerns I have with the
City of Fall River's "APPLICATION FOR
LICENSING OF MARIJUANA
ESTABLISHMENTS IN THE CITY OF FALL
RIVER." Available at: <https://www.fallriverma.org/wp-content/uploads/2021/08/BCEDC-Marijuana-Application-1.pdf> (last visited Oct. 12, 2021).

The application starts with an improper term of art, "letter of non-opposition," that is not legally relevant nor required for an adult-use cannabis establishment and which only pertains to medical establishments. What my clients are seeking is the Host Community Agreement required of an adult-use cannabis applicant under *M.G.L. c.94G*, §3 and the Cannabis Control Commission Regulations at 935 CMR 500.00 *et seq.*, not a letter of non-opposition which is a requirement for medical cannabis license applicants only.

As you can see from the email from Mr. Fiola below, my clients applied for an HCA (despite your application containing an incorrect reference to a document that would not be a prerequisite to them in pursuit of state licensure).

As you can see from the email from Mr. Fiola below, my clients applied for an HCA (despite your application containing an incorrect reference to a document that would not be of any utility to them in pursuit of state licensure as an adult-use cannabis cultivation establishment) under the belief that the FRCRC existed, which is apparently not the case despite Mr. Fiola's understanding to the contrary.

The listed Commission members contain a misstatement of the Mayor's authority under the City Charter and basic principles of municipal law and include an individual whose presence on the Commission is a gross overreach under state law. Namely, the Mayor, as the figurehead of the Executive Branch of the City of Fall River, has no power to appoint a City Council Member as a member of the FRCRC because the City Council is the co-equal Legislative branch of the City of Fall River's government. City Council President Ponte has indicated in public statements that no such member of the City Council has been appointed, which given the lack of the Mayor's authority, makes logical sense.

The FRCRC is also to include a "City resident with medical background as appointed by the Mayor." My clients are pursuing an adult-use cannabis license and there is no medical use or benefit contemplated so I am truly at a loss as to why someone with that background would be a gatekeeper of who may embark in pursuit of a legal enterprise in the adult-use context. Public health impacts are certainly relevant to policymaking, but the question of whether adult-use cannabis should be available to people 21+ has been answered by the voters of Question 4, the State Legislature, and the Cannabis Control Commission. It is unclear what insight a person with a medical background might bring to a review of an adult-use HCA license applicant, but perhaps this was included because the application only refers to the inapposite term of a

Similarly confusing to me, the FRCRC, once created, is seeking to impose a financial means test on applicants where none exists under state law. This financial means test is extremely broad in that it states that there will be a review of "the financial strength and background of the applicants" and which is a direct affront to the state's Social Equity Program, which my clients are graduates of. What other business has a prerequisite of financial strength prior to being eligible to even try to succeed? What your application ignores is that the HCA and the provisional license from the CCC are the number one fundraising tools for my over 160 cannabis clients throughout Massachusetts. It also seems to ignore the right of a business to try and fail. Any fear of what the failure of a cannabis business might look like can be alleviated by the terms of the HCA and the CCC's regulatory requirement to have a wind-down bond with strict decommissioning protocols required in the event of business failure.

The "false pretenses" that my client was referring to was that they were under the impression that the FRCRC existed when you collected their \$2,500 fee. As a former municipal attorney, I understand how that phrasing could be interpreted as inflammatory and why it generated the response from Corporate Counsel Rumsey, but unless you can demonstrate that the FRCRC existed prior to October 4th, then I hope you can understand why my clients felt that way. We started communicating with the City/Fiola in March and we have been more than patiently waiting for the new process to be unveiled. To see that the application that exists now is inapposite to the document we are requesting was incredibly offputting to me and my clients, hence the use of that phrase.

In addition, as the City should be aware, a municipal fee has to meet the three-prong test outlined in *Emerson* *C. H. v. Boston*, 201 Mass. 415 (1904).

In addition, as the City should be aware, a municipal fee has to meet the three-prong test outlined in *Emerson College v. Boston*, 391 Mass. 415 (1984):

A fee is an amount charged for a service to the individuals who use or benefit from it. A fee may be imposed when a local government provides a particular service (such as a police detail), issues a permit or license, or offers a benefit, like a recreational program. Municipalities can establish fees as long as they meet the three-prong test set out in *Emerson College v. Boston*, 391 Mass. 415 (1984):

1. A fee must be charged for a particular service that benefits the party paying the fee in a manner not shared by other members of society. In other words, a fee may not be charged for general services that are mandatory or supplied to the public at large, such as core education and police protection.
2. A fee must be paid by choice. That is, the person paying the fee must have the option of not using the service and thereby avoiding the charge. It follows that a service can be withheld from individuals who refuse to pay.
3. A fee must be collected not to raise revenues, per se, but to compensate the governmental entity for its expenses in providing the service. This has been interpreted to mean that a fee cannot exceed the cost to provide the service.

<https://www.mass.gov/doc/user-fees-0/download> (internal citations omitted).

Even at the "discounted rate" of \$25,000 for Social Equity applicants, the fee that Fall River is attempting to charge HCA applicants fails the *Emerson* test as it is patently an attempt to raise revenues. There simply is not \$50,000 or \$25,000 worth of review work to be conducted for someone's candidacy for a Host Community Agreement and these fees, therefore, fail prong three of the *Emerson* test. When I asked Corporate Counsel Rumsey where those fee numbers came from, he informed me (while my clients were present on the Zoom) that "there's a lot involved" and that other applicants "had paid \$50,000" prior to the creation of this new application process. How can you possibly justify that high of a fee? I don't charge that much for folks to do all of the local permitting and state licensure work and my hourly rate is \$450 for general applicants and \$360 for Social Equity applicants such as my clients here. I'm truly dumbfounded to see Fall River, of all municipalities, attempt to collect this amount of money through an application process that was at best half-baked and that was to be put through a committee that does not yet exist and one member cannot be appointed via the mechanism outlined in the application itself.

So, on behalf of my clients, I would like to expressly reserve all of their rights, including in law and in equity, for the unbelievably tone-deaf fee structure the City of Fall River is seeking to enact on the back of a form that was clearly cribbed from

So, on behalf of my clients, I would like to expressly reserve all of their rights, including in law and in equity, for the unbelievably tone-deaf fee structure the City of Fall River is seeking to enact on the back of a form that was clearly cribbed from some other purpose it served and which includes a plainly illegal money grab for a review to be conducted by folks who are not at all qualified to determine whether or not a cannabis business would or would not be successful (which is in and of itself a strange test to impose in a free democratic capitalist society) on the basis of an amorphous "financial strength test" that has no analog under state law. If you cannot itemize the review costs, you do not get to charge \$25,000-50,000 as a fee. This is again, just incredibly odd timing based on the fact that your prior Mayor is literally going to federal prison for extorting cannabis operators. Fees can not be revenue-generating and without an accounting of what the review actually costs, I find it incredibly unlikely that \$25,000 or \$50,000 is anywhere near the true cost for a review of this nature.

To demonstrate how serious we are and to emphasize that I'm not just some Johnny-come-lately cannabis attorney without a background in municipal law, please find below the first of what could be many Public Records Requests. Please direct this inquiry to the requisite Records Access Officer at City Hall.

This is a request under the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10). I am requesting that I be provided a copy of the following records:

All currently in force contracts between Ken Fiebo

This is a request under the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10). I am requesting that I be provided a copy of the following records:

- All currently in force contracts between Ken Fiola Jr. and/or the Bristol County Economic Development Consultants and the City of Fall River.
- A copy of all correspondence between the City of Fall River and Ken Fiola Jr. and/or the Bristol County Economic Development Consultants that led to the execution of any contract with Fiola/BCEDC that is presently in force that pertains to Fiola/BCEDC's role in reviewing applications for a proposed marijuana business in the City of Fall River.
- All correspondence relating to the creation of the City of Fall River Cannabis Review Commission, including any public meeting minutes where this entity was proposed and approved by any person or body in the City of Fall River with authority to create it.
- All correspondence from any City employee to any entity or person that references my clients in any way.
- The names of each member of the FRCRC.

I recognize that you may charge reasonable costs for copies, as well as for personnel time needed to comply with this request.

The Public Records Law requires you to provide me with a written response within 10 business days. If you cannot comply with my request, you are statutorily required to provide an explanation in writing.

Finally, in light of the defensive tone of the back and forth between City officials/Fiola and my

with this request.

The Public Records Law requires you to provide me with a written response within 10 business days. If you cannot comply with my request, you are statutorily required to provide an explanation in writing.

Finally, in light of the defensive tone of the back and forth between City officials/Fiola and my clients, please direct all future correspondence regarding City Slickers LLC to me directly.

We would like to request that my clients' HCA application be processed despite the numerous errors I've outlined above and I would also like to request that you have a lengthier internal conversation about the wisdom and legality of charging such astronomically high fees without justification.

Sincerely,

Blake Mensing

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Blake M. Mensing, Esq.
Founder & Chief Counsel
The Mensing Group LLC