

Memorandum

To: Essex Selectboard; Greg Duggan, Town Manager
Copy: Katherine Sonnick, Community Development Director; Sharon Kelley, Zoning Administrator; Jean O'Sullivan, Economic Development Coordinator; Ron Hoague, Chief of Police; Susan McNamara-Hill, Town Clerk
From: Darren Schibler, Town Planner
Date: July 29, 2022
Subject: Local Cannabis Control Commission

Issue

The issue is whether the Selectboard will establish a local Cannabis Control Board in Essex.

Background

Act 164 (passed in 2020) and Act 62 (passed in 2021) legalized the production, processing, and testing of recreational cannabis products (those containing psychoactive compounds). Similarly to alcohol and tobacco, these laws specifically delegated the authority to allow retail sale of cannabis to municipalities by an opt-in requiring a majority vote by Australian ballot at a duly warned and noticed public meeting. The Town of Essex passed such a measure on March 1, 2022. Municipalities can choose to later vote to rescind the vote, but any retailer that opened before the rescission will be allowed to continue operating. Under [7 V.S.A. § 863](#)(d)(1), municipalities may not prohibit operation of other types of cannabis establishments, either by local ordinances or zoning bylaws, but rather must treat them like any other business. Like other businesses, cannabis establishments can be regulated for signs and public nuisances under [24 V.S.A. § 2291](#)(7) and (14), respectively. Additional information can be found on the [Town's cannabis webpage](#) and [Q&A document](#) published prior to the March 2022 vote.

The State Cannabis Control Board (VT CCB) has developed [rules](#) that provide clarity on state regulation of cannabis establishments and operations, including [licensing, operations, and compliance / enforcement](#). The VT CCB has also created [guidance for municipalities on local cannabis regulation](#). In general, the state rules address common concerns and criteria typically regulated by local ordinances, including:

- Different license types and tiers for cultivators, manufacturers, testing laboratories, retailers, and integrated operations that perform all of these activities;
- Background checks and identification requirements for persons involved in cannabis operations (verified through issuance of identification cards);
- Standards for energy efficiency, pesticide use, waste management, sanitation, and product potency / quality;
- Requirements for product marketing, signage, packaging, labeling, and samples, including regulations against marketing to underage users and required buffers from schools for retail sales (see the [map showing the buffer zones in Essex](#)) – note that these buffer zones cannot be modified by municipalities;
- Required site management and security practices, including fencing, lighting, screening from roadways, cameras, and alarms;
- Compliance monitoring / enforcement, authority for which rests solely with VT CCB.

Given this extensive regulation by the VT CCB and the limited local authority to regulate cannabis under zoning, the Planning Commission and Community Development staff agree that there is no immediate need to revise the Town's zoning regulations in response to creation of the recreational cannabis market. All cannabis establishments will be allowed or not, with permit review as required, based on the appropriate land use category and scale of development. See the memorandum "[Cannabis and Municipal Zoning Regulations](#)" for more details. Staff and the Planning Commission will monitor the rollout of cannabis in Essex and make any clarifications to zoning as needed.

One other potential outstanding issue that may arise is odor from cannabis cultivation and processing, which may be considered a nuisance by some in the community. Currently, it is unclear if or how the state would regulate odor from cannabis, including whether Act 250's air quality criterion ([10 V.S.A. § 6086\(a\)\(1\)](#)) or the [Vermont Air Pollution Control laws](#) would apply to cannabis establishments. Though the CCB rules do have some air quality standards for indoor facilities, it's unclear whether those will be sufficient, and whether they supersede any local authority. The CCB and VLCT have made it very clear that municipalities can indeed regulate nuisances under [24 V.S.A. § 2291\(4\)](#), in addition to zoning through performance standards, but in either case, such regulations must treat cannabis equally as other types of uses. It is also unlikely that such regulation would apply to outdoor cultivation odors (which may be considered comparable to manure spreading).

Local Cannabis Control Commissions

Under [7 V.S.A. § 863\(b\)](#), municipalities may establish a local Cannabis Control Commission (CCC), which operate similarly to local boards of liquor control, though unlike liquor control boards, municipalities are not required to establish local CCCs. They may be created by vote of the municipal legislative body and may include the members of said legislative body (or others appointed by the legislative body).

Creation of a local CCC must be reported to the VT CCB, after which point a state cannabis establishment license will not be issued until a local license is obtained; local CCCs must act on a license application within 60 days of its receipt under CCB Rule 2.14, or else the license is presumed granted. Local CCCs must also inform the VT CCB if they issue, deny, or revoke any local control license. Licenses expire one year from the date of issuance, and therefore must be renewed annually.

Local CCCs have very limited authority and function, which is to issue, suspend, or revoke local cannabis establishment licenses (including all types and tiers of licenses) based **solely** on compliance with local ordinances and zoning bylaws as allowed by statute (see above). Placing any additional conditions, or creation of special rules, for operation of cannabis establishments is a violation of [7 V.S.A. § 863\(d\)\(2\)](#) and (3).

The VT CCB and its designees will be responsible for enforcement of their own rules as laid out in [Rule 4: Compliance and Enforcement](#). Rule 4.2 indicates that the VT CCB may choose to involve state and local law enforcement in their investigations "as appropriate," but are not required to do so. Therefore, state and local law enforcement do not have authority or

responsibility to enforce the VT CCB's rules, but it is presumed that violations of state law or local ordinances committed in the course of cannabis operations would fall under normal law enforcement procedures, including administrative or civil fines, penalties, criminal procedures, or legal action.

Under CCB Rule 1.4.4, applicants for state CCB permits are already required to certify that they will comply with applicable municipal ordinances, as well as requirements of municipal water and wastewater providers. Therefore, even without a local CCC, violation of local ordinances presumably would constitute violation of state rules and may result in administrative penalties, creation of corrective action plans, and/or revocation of state cannabis licenses or cannabis establishment identification cards.

In summary, the only benefit of establishing a local CCC would be to allow the Town to directly control the issuance, suspension, or revocation of local cannabis establishment permits based on compliance with local ordinances and bylaws, which is already required under state rules. Furthermore, municipalities are still empowered to enforce violations of their own ordinances and zoning bylaws through existing means.

Cost

The primary cost to establishing a local CCC would be time for management staff, the Town Clerk, and Police as well as the Selectboard / local Cannabis Control Commission members to process and prepare licenses for review. This may be substantial depending on the number and complexity of local licenses. For comparison, it is estimated that each local liquor license application requires 1.5 hours of staff time. Members of the Selectboard / Local Liquor Control Board also spend time reviewing and approving local liquor licenses. There also may be incidental printing costs associated with review.

Municipalities may not collect their own fees for local cannabis establishment licenses under [Act 186 of 2022](#) (which established statewide cannabis licensing fees under 7 V.S.A. § 910). Instead, the VT CCB collects a \$100 "Local Licensing Fee" (7 V.S.A. §910(9)), which will be distributed to municipalities on a quarterly basis, regardless of whether a local CCC exists. However, 7 V.S.A. § 846(c) states that local license fees are only paid "after reduction of costs for administration and collection" by the VT CCB, so the total amount receivable by the Town will be somewhat less than \$100 per license.

Recommendation

Staff do not recommend that the Selectboard establish a local Cannabis Control Commission for the Town of Essex.