

Regulating Cannabis Retail Establishments
September 14, 2022
Q&A

1. Did I hear you say that small cultivators are covered by the farming provisions of statute?
Yes, small cultivators are regulated as agriculture. This was changed with the signing of Act 158. A summary of that bill may be found here:
https://ccb.vermont.gov/sites/ccb/files/2022-06/Act.158_One.Pager_.pdf

To provide additional clarity, only the following type of cultivator is regulated as agriculture: small outdoor cultivators who are located on land that was already subject to the Required Agricultural Practices.

2. Like Hemp, Cannabis is aromatic and can cause issues with neighbors. Can Zoning rules regulate setbacks (separation distances) from inhabited structures?
For indoor and Outdoor above a tier 2 zoning rules can be applied. Tier 1 outdoor is considered Agriculture and odor can't be regulated.
3. Retail to retail would not require a zoning permit. However, what if the building/parking is not appropriate for a greater customer base? Can the DRB require a Site Plan Review? Also, if the property owner is in violation with Zoning and cannot get a license from the town clerk because of the violation, will the State allow the owner to ask for another license in a different location?
4. If the State CCB approves a retail license application, but the municipal LCC rejects/declines an application, will it fail?
5. Do you know how many municipalities have created a local control commission?
A list of local control commissions may be found on our website:
<https://ccb.vermont.gov/municipalities>
6. Does the CCB have a license template that municipalities can use to issue permits?
No, the CCB does not have license templates for municipalities. This is up to the individual municipality to develop.
7. Is there any guidance on how a local control commission should conduct its review process - e.g., public notice requirements, interested party determinations, decision format (written or not), etc.?
There is no statute or rule that dictates how a local control commission conducts its review process. 7 VSA 863 states the topics that are subject to local control commission review. And Board Rule 2.14 has some rules for how local control commissions should communicate with the CCB.
8. Are there any specific rules to parking and, or access to cannabis retail establishments.
On the state level for parking, no. Visitors must provide ID showing they are 21 or older prior to gaining entry.
9. Are there any limitation on Hours of Operation: ex. Like liquor sales
There are no limits at the state level on hours of operation.

10. Can you clarify your previous discussion about buffers: What is latest guidance from the CCB on how municipal zoning regulation powers are curtailed for commercial cannabis establishments? I understand the CCB is planning to revise their issued municipal guidance document to soften the language about buffers not allowed around commercial cannabis establishments. Is this true and are there other ways in which the guidance for municipalities will change?

The CCB guidance on buffer zones has already been revised to give a more accurate description of municipal authority in this area: https://ccb.vermont.gov/sites/ccb/files/2022-08/Buffer.Zone_Guidance_FINAL_0.pdf.

11. If a cannabis growing establishment moves into a home in a village that was not previously a farm and the grow will be less than 1000 sq ft, would they be in violation of the stated statute?

12. What appeal/recourse does an applicant have if either the CCB or local control commission denies an application?

13. What is process if the Town approves local zoning permits, but it is appealed by someone?

14. Is there any sample language that the CCB can provide that would help a municipality to add cannabis to a local option tax?

Under state law, a local option tax must apply to all products sold in a municipality. It cannot be applied selectively. So if a municipality has a local option sales tax cannabis sales will be subject to the local option tax. If a municipality does not have a local option tax cannabis sales will not be subject to the local option tax.

The legislation in Montpelier has authorized a local option tax as follows:

Local option tax is calculated as 1% of the taxable (net) sales for each town. A transaction is subject to local option tax if it is subject to the Vermont sales, meals, rooms, or alcoholic beverage tax.

15. It would be extremely helpful if the CCB could offer a sample language that would aid municipalities in crafting language.

16. So for example, if a municipality had a local option tax that read as follows would it pass legislation:

The Town of Hartford is authorized to levy a tax of one percent on rooms, meals, alcoholic beverages, and the sale of cannabis and products that contain cannabis.

If a town chooses to authorize a local option sales tax, that will apply to all sales that occur in the town. There would be no need to specifically name cannabis when establishing such a tax, because it will apply to cannabis sales regardless. It is not permissible for a town to create a local option sales tax that applies only to cannabis, or to any specific product. Local option sales taxes apply to all sales as a matter of law.

Keep in mind that there are different types of local option taxes. There is a local option tax that applies to meals and rooms, and there is a different local option tax that applies to sales. Cannabis is subject to sales tax, but not to meals and rooms tax.

17. How can an applicant appeal a denial by LCB?

18. It sounds like towns can establish conditional standards in their zoning that are specific to a particular type of cannabis establishment, is that correct?
19. Who enforces illegal advertising? The local CCB?
The state CCB will be reviewing all proposed advertising for cannabis establishments and their products. The Board will be responding to complaints regarding any unapproved advertisements.
20. The Federal Law prohibits the sale and growing of Cannabis. Federal Law trumps state law. Can a town prohibit Cannabis sale and/growing stating that it chooses to follow Federal Law?
No. State law trumps municipal law, and state law provides that municipalities may not prohibit the operation of a cannabis establishment. See 7 VSA 863(d).

Those who choose to operate cannabis establishments are accepting the risks associate with federal prohibition, though it has been many years since anybody operating lawfully under their state statutes has been subject to any federal enforcement.
21. Will security and ID checking be required at back door or side door entry points?
22. If one or more of the requirements you mentioned are not being complied with, what is the enforcement mechanism? Once the CCB is notified of the alleged compliance issue, what is your enforcement process and time horizon?
Enforcement actions will vary by violation type - anything from a requirement to produce a corrective action plan to revocation of the establishment's cannabis license. We'll get to more information on compliance & enforcement shortly.
23. Does anyone have any examples of municipal zoning language regulating cultivation operations that do not meet the small cultivator criteria?
The CCB does not, but fellow municipalities may have language they can share.
24. Can you compare law enforcement engagement with a cannabis retailer to an alcohol retailer. Police have to be granted full access to any business licensed by liquor and lottery at any time they are open for business, all areas of the business. No warrant or probable cause is required. Is that the same for cannabis?
25. Can law enforcement be denied access to a retailer, or other types of licensees?
26. Who does law enforcement report to if they identify violations at a cannabis licensee?
27. Will members of the Compliance Team be checking in regularly with law enforcement as do the Dept of Liquor and Lottery Inspectors
28. Will the CCB Compliance Team be conducting compliance checks? (Meaning sending someone to a retailer without proper ID, or who is underage, to test if rules are being followed)
29. What documentation does the applicant have to provide in their application to the state to prove that they have already received a local zoning permit?

Applicants are required to attest to compliance with any zoning bylaws that may apply to their cannabis establishment. If the Board approves the applicant for a license, we send the municipality a letter notifying them of the pending license. If the municipality has reason to believe that the applicant is not in compliance with local zoning, the letter provides instructions for the municipality for reporting this information to the Board, and we will conduct an investigation.

30. Who is responsible for monitoring and stopped public consumption outside a retail store. Front of a store can be easily seen, but what about the back of a store, etc. Are you requiring outdoor cameras? Who has the responsibility the store or the Municipality?

Outdoor cameras are not required. Public cannabis consumption is prohibited by state law (as is consumption in all places of public accommodation, and some places of public accommodation can be private property.) Knowingly permitting unlawful activity on the premises of a cannabis establishment is a violation of Board rule and could result in an enforcement action.

31. Are there weapon checks at the door? Any gun restrictions on premises?

32. Are LLCs required to keep local applications confidential similar to the CCB's provision? Our liquor applications are currently included in the Selectboard agenda packet.

33. How quickly will alleged compliance issues be investigated? How many staff people does the compliance team have?

34. Our town has opted in, but we have not yet set up a local control commission. How do we get information about pending applications for retail establishments? Also, where do we check online for all types of licenses that have been issued so we can check on establishments or growers that may not be licensed?

There's a list of projects in the queue by municipality on our website here:

<https://ccb.vermont.gov/municipalities>. All licensed establishments are also found on our website here: <https://ccb.vermont.gov/licenses>

35. Will local control boards be notified when the compliance team opens an investigation, or at any point in the compliance process?

36. Can you provide contact information so that Law Enforcement could report potential violations or complaints to the Compliance Team or should those be submitted to the Dept of Liquor and Lottery Investigator. I suspect most retailers will hold dual licenses (CCB and DLL).

CCB contact info for the compliance team is CCB.Compliance@vermont.gov.