

## Retail Cannabis

(S.54, Act 164) (Adds 7 V.S.A. chapters 31, 33, 35, 37, 207; repeals 7 V.S.A. §§ 841 – 843; amends 32 V.S.A. § 3102(d)(3); amends 32 V.S.A. § 9701(31); adds 32 V.S.A. § 9741(53); adds 32 V.S.A. § 9706(mm); amends 32 V.S.A. § 9202(10); adds 32 V.S.A. § 9201(n); amends 32 V.S.A. § 5811; adds 20 V.S.A. § 2358(f); amends 23 V.S.A. § 2100; amends 23 V.S.A. §§ 1201 – 1204; amends 6 V.S.A. §567; amends 18 V.S.A. §§ 43030, 4230a; creates session law)

With the passage of S.54, Vermont became the eleventh state in the United States to permit the retail sale of cannabis. The bill, which was allowed to become law on October 7 without the governor's signature, is a 108-page piece of legislation that outlines how Vermont will implement a retail cannabis marketplace. Following are those aspects of the legislation that impact our towns, cities and villages.

**Consumption of cannabis in public places.** The current prohibition against consuming cannabis in public places remains.

**Wrap-up Cannabis Control Board.** The new Cannabis Control Board consists of seven members: three from the Executive Branch, two members from the House of Representatives and two members from the Senate, meaning there is no municipal representation. The board is responsible for safely and equitably implementing and administering the laws enabling access to cannabis by adults in Vermont. The board will promulgate rules to implement S.54; administer the state licensure programs for cannabis establishments, including compliance and enforcement; administer the state medical cannabis program; and submit an annual budget to the governor. It will also appoint a full-time executive director who must be an attorney with experience in legislative or regulatory matters. The executive director will assist the board and supervise and administer the operation and implementation of S.54.

**Cannabis Control Board Advisory Committee.** S.54 creates an advisory board that has no set job description but appears to be a resource for the Cannabis Control Board. The advisory board comprises a wide variety of members from various backgrounds and interest groups. The state treasurer is responsible for appointing "one member with an expertise in municipal issues." This individual is the only voice for municipal government within the Cannabis Control Board structure and his or her role is purely advisory, which provides no guarantee that the concerns of municipalities will be adequately addressed.

**State administration of local fees.** The State Cannabis Control Board will set state and local license fees, which will be adopted by the legislature. Municipalities that host a cannabis establishment will receive a fee paid to the state by applicants when an applicant applies for a yearly license. When the Cannabis Control Board establishes local fees, its recommendations "shall be accompanied by information justifying the recommended rate." Local fees are designed "to help defray the costs incurred by municipalities in which cannabis establishments are located." Given the disparate municipal needs across the state, it is unclear how the board will quantify costs incurred by municipalities to determine local license fees. As far as VLCT can ascertain, S.54 is the first time the state has assumed the responsibility of collecting local license fees, distributing those fees back to municipalities, and then charging municipalities for this "service." Municipalities generally set, collect, and administer their own license fees, and when the state

does administer a local license fee – such as a local liquor license – it does not bill the municipalities. Municipalities will not know what the local license fees will be or what the state will charge for its “service” until the board presents the fees to the legislature by, no fooling, April 1, 2021.

**Local licensing and regulatory authority.** Municipalities that host cannabis establishments may create a local cannabis control commission. This commission (for example, a selectboard or city council) must administer the rules furnished to them by the Cannabis Control Board. No additional local standards will be allowed beyond signage and nuisance ordinances and very specific zoning provisions of 24 V.S.A. § 4414. It should be noted that local governments may already regulate signage, nuisances, and 24 V.S.A. § 4414. Therefore this provision is meaningless and adds no new authority to towns. Rather, it restricts the local regulatory authority a town may use that currently exists under state and local laws. Local governments are forbidden from adopting local ordinances to regulate the time, place, and manner of cannabis operations as part of local licenses and permits. These licenses will be perfunctory, and cannabis control commissions are designed to be the “rubber-stamping” approval entity of local licenses from municipalities. Prohibiting municipalities from regulating cannabis establishments via municipal ordinance is a departure from the authority municipalities were given to regulate medical cannabis dispensaries pursuant to 18 V.S.A. § 4471I. Municipalities will have to wait for the Cannabis Control Board to present the rules for cannabis establishments to the legislature by next April. These rules – which would address licensing criteria, land use and environmental laws and advertising regulations at the state and local level – will affect current zoning bylaws. How will those locally adopted bylaws be affected by state regulations? What adjustments to zoning bylaws will municipalities need to consider to align with state cannabis regulations and community needs, adherence to the town plans, and local economic development goals?

**Voter approval of cannabis operations.** Local voters will only have a little say about whether to allow a retail establishment in their communities. To allow retail sales in their community, they must opt in, however they have no voice in whether growers, manufacturers, laboratories, or processors are allowed. Some communities that currently have medical cannabis dispensaries will also be able to vote on integrated licensees in addition to retail establishments. Integrated licenses allow a licensee to engage in cultivation, wholesale, manufacturing, retail, and testing and are only available to applicants that hold a dispensary registration. Only five integrated licenses are permitted in the state and each one is for a registered dispensary already established here. Local voters must vote by Australian ballot at an annual or special meeting to permit the operation of a retail establishment. This provision of S.54 took effect upon passage, and municipalities may now hold local votes if they wish. Municipalities that vote to allow retail operations or permit integrated licenses may rescind that vote at a subsequent annual or special meeting, but all licensed cannabis retailers or integrated licenses that are operating at the time of the subsequent vote will be grandfathered in.

**Taxing authority.** S.54 does not provide any cannabis-specific taxing authority to municipalities. The state will keep and control all tax revenue which includes a stand-alone 14-percent cannabis excise tax and the six-percent sales and use tax. No tax revenue will go to municipalities except for the 16 towns and cities that have a one-percent local sales tax. Those municipalities will receive tax revenue if they host retail establishments and the customary 70/30 split of local option tax revenues applies. A municipality may vote to enact a local option sales tax on all sales in the municipality – and may want to if it is hosting retail cannabis establishments and has constituents

who shop online. Online shopping local option sales tax is applied in the community in which the item is delivered. Of course, once the voters adopt a local option sales tax, that option needs to be approved first by the House Ways and Means Committee, followed by then the entire legislature. The timeline for fully implementing the retail market is ambitious, as shown in the Government Operations Committee Conference Report from September 15.

## **Suggested Language for Town Meeting Vote from VLCT**

Opt-in (allow) cannabis retailers or integrated licensee establishments\*†

- Shall the town authorize cannabis retailers in town pursuant to 7 V.S.A. § 863?
- Shall the town authorize integrated licensees in town pursuant to 7 V.S.A. § 863?
- Shall the town authorize cannabis retailers and integrated licensees in town pursuant to 7 V.S.A. § 863?

Note: Towns may vote by Australian ballot to allow cannabis retailers, integrated licensees, or both to operate within the town. “Cannabis retailer” means a person licensed by the state Board to sell cannabis and cannabis products to adults 21 years of age and older for off-site consumption. “Integrated licensee” means a person licensed by the state Cannabis Control Board to engage in the activities of a cultivator, wholesaler, product manufacturer, retailer, and testing laboratory in accordance with state law.

## **Select Board discussed and had the following questions**

Hi Shaun,

I am following up on some cannabis questions you had.

Question:

1) “For proposed ballot item on opt-in there are now three vote options indicated but nothing indication option for voters to say NO not interested in allowing retail sales in town. Can suggested language for this option be provided?”

2) Do we know at this phase if cannabis retail sales may meet in exempt status category via VT Department of Ag operations (would lead to situation where town has not say how this goes if under control of Dept. of Ag.)?”

Response to 1: Correct, there is not authorization to have a town vote to permanently say “no” to cannabis retailers indefinitely. A town says “no” to cannabis retailers by either 1) not voting on the issue at all; or 2) voting against (i.e. disapproving) an article/question placed on town meeting asking the town to opt-in. The effect of both of these outcomes is that cannabis retailers wouldn’t be permitted in these towns.

I’m not sure about the Dept. of Agriculture “exempt status” category they are referring to. I recommend reading Advocacy’s Leg. Wrap-up here (PAGE 12): about what other

types of regulation the town can apply to cannabis (this is the information that begin this document).

Please let me know if you have other questions.

**Carl Andeer**

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## **Response from Healthy Vermont**

Hi Shaun,

Nice to hear from you. How are you managing in these times? I

I wanted to get you a quick response.

So, good question. Were you able to open the infographic doc? That may help. (I've also attached the pdf). [Click here for a downloadable PDF of the infographic.](#)

Basically, to briefly quote that document: "The State Cannabis Control Board, who will oversee and regulate adult-use cannabis, has not yet been formed as of 12/2020, so advertising and other regulations are still unknown. Towns should wait for the CCB's regulations to be known before voting so that citizens understand details of what they are voting on."

Since the CCB is not yet been in motion and the question remains if once a town opts-in if they will have any authority to zone or regulate (our analysis of the law says not), we recommend that towns wait to make an informed decision, and one where the town can develop additional limited regulations and requirements before a vote. In other words, voting before more is defined and before towns engage in education on the topic (and evaluation of possible outcomes), is not what is recommended by the substance prevention community. I think that what is best is to direct you to the document and then

we can discuss your questions. The document we worked on shares more information and makes recommendations, as well as a timeline.

I'm curious if Hardwick has been having any conversations yet on this topic.

I'm happy to be a resource and talk more,

Alison

### **Select Board Would like HPC Input**

Hi Everyone,

Healthy Lamoille Valley seems to be advocating for a wait on Town vote on these cannabis questions until Town Meeting 2022. Their rationale is basically that State-level governance and rule making is still a work in progress and businesses can't apply for these cannabis permits until Oct 2022 anyway.

I'd be interested in hearing the Planning Commission view on this. Would the HPC feel rushed in any way if we put these questions to the voters at Town Meeting 2021? Are there any reasons the HPC would like us to delay the questions until 2022?

Eric Remick