

VLCT

### **Cannabis and the Illusion of Local Control**

The legislature and the Cannabis Control Board (CCB) continue to race to get a cannabis marketplace in place as initial applications are due to begin in April. For more than a year now, local government officials have been waiting – patiently – for guidance and final rules and regulations from both the legislature and the CCB. The CCB issued Guidance for Municipalities, which was meant to help local governments understand the role of municipalities in the marketplace. The guide is helpful in outlining many provisions of the law, but falls short in explaining the “rules” set out in Act 164 of 2020 that local governments were anticipating. It’s become more clear that local governments likely will not see those rules at all. Rather, the CCB will rely on local zoning as the main – if not only – means of local regulation of cannabis establishments.

Several bills currently in the legislature further address and amend cannabis laws, fees, and taxes. But they do not adequately consider the needs of municipalities, leaving them with little to no control over cannabis operations in their jurisdictions and *no* revenue or taxation authority. Unless you are one of Vermont’s 16 municipalities with a local option sales tax, you will receive *no* financial benefit from hosting a cannabis establishment.

#### **Municipalities with a Local Option Sales Tax that Will Receive 1% Tax\* Revenue from Retail Cannabis if they Host Retail Establishments**

Brandon	Brattleboro	Burlington	Colchester	Dover	Manchester	Middlebury	Rutland Town
St. Albans City	St. Albans Town	South Burlington	Stratton	Williston	Wilmington	Winhall	Winooski

\* Municipalities retain 7/10<sup>th</sup> of the 1% tax; the 3/10<sup>th</sup> is retained by the state for the PILOT program.

The current proposal before the House related to licensing fees in **H.701**, a bill introduced today, would cap local licensing fees at at \$100. To put the fee and taxation into perspective, the state will assess the 6 percent sales tax and a 14 percent excise tax on cannabis sales. The state licensing fees range from \$750 for a small outdoor cultivator license to \$100,000 for an integrated license. Meanwhile, towns and cities will receive at best \$100 per license and \$0 from taxes – *unless* you’re one of the lucky towns with a local option sales tax and you host a retail establishment. The numbers speak volumes as to the level of consideration the legislature – in particular the House Ways and Means Committee – has paid to the needs of local communities that will host cannabis establishments.

In a related matter, the Senate Agriculture Committee aims to soon vote out **S.188**, a bill that would regulate small cultivators of commercial cannabis as “farms” under the Required Agricultural Practices, 6 V.S.A. chapter 215. This would prohibit local zoning bylaws from regulating small cannabis cultivators under zoning. The bill’s proponents are concerned that local zoning bylaws don’t regulate agricultural uses currently. Allowing them to be regulated by zoning would therefore hinder the ability of small growers to operate in communities across the state. What is lost in the many discussions is that, for more than a decade, the legislature has prohibited towns and cities from regulating agriculture and farming. As a result, zoning bylaws are often silent on such uses. Now, local governments are being shut out of regulating cannabis cultivation in ways that are consistent with town plans and zoning bylaws as state cannabis laws and regulations take shape.

As it stands now, local governments only have authority over nuisance, signage, and zoning issues as they concern retail cannabis establishments. But these ordinances and bylaws already apply to town or city activities and therefore provide no increased authority beyond what they have had for decades. The local cannabis commissions set-out in Act 164 of 2020 look much like local liquor boards in that their regulatory authority is severely limited. Their authority is restricted to enforcing state laws and regulations, and potentially suspending or revoking licenses for failing to comply with those rules. And it appears that those rules may never even be produced. Therefore, with no rules to work from as the enabling legislation envisioned, it appears that a local cannabis commission lacks any substantive authority at the local level beyond “rubber-stamping” state licenses.

The only good news for local governments is **S.152**, a bill in Senate Finance that would provide tax revenue to local governments that host retail cannabis establishments. The bill would distribute four percent of the taxable retail sales’ revenue to municipalities that host retail cannabis establishments. The bill may have a fighting chance of passage in the Senate, although the level of revenue may be scaled back. However, if S.152 ever reaches the House, it is almost certainly dead in the water. Over the years, the Ways and Means Committee (the committee of jurisdiction) has always been skeptical about approving local option taxes set forth in municipal charters approved by local voters. Any discussion of creating a local cannabis tax or even sharing state revenues has died on the vine in committee and no such proposal will likely ever make it out of that committee. It’s not uncommon to hear the committee refer to local option taxes as “regressive” without the slightest hint of irony when those same taxes are levied every day by the state and those monies find their way to state coffers.

H.701 is on the floor of the House for early next week, S. 152 remains on the wall in Senate Finance, and S.188 remain in Senate Agriculture but may move out of committee in the coming weeks. We’ll keep you apprised of any developments.

Resources for this article:

- **CCB Guidance for Municipalities**
- **H.701 Fiscal Note, Joint Fiscal Office, Jan. 27, 2021**

