

Town of



AMHERST *Massachusetts*

TOWN HALL
4 Boltwood Avenue
Amherst, MA 01002-2351

Department of Economic Development
PH: (413) 259-3079
FX: (413) 259-2405
kravitzg@amherstma.gov

MEMORANDUM

To: Paul Bockelman, Town Manager
From: Geoff Kravitz, Economic Development Director
Date: May 10, 2017
Re: Recreational Marijuana Statement of Principles

Purpose

The purpose of this memo is to provide background on the recreational marijuana law and serve as a comprehensive repository of Amherst's position on various aspects of the law. It is anticipated that this memo will be updated as new developments occur.

Legislative Background

On November 8, 2016, Massachusetts voters approved 54% to 46% Ballot Question 4, the Regulation and Taxation of Marijuana Act (the recreational marijuana law), which legalized the recreational use of marijuana. On December 30, Governor Baker signed HB 4326, an Act Further Regulating the Cultivation of Marijuana, which extended the original deadlines in the recreational marijuana law by six months. The legislature is currently holding public hearings in contemplation of additional changes to the law, with the expectation that the bill will be ready by the end of June.

Local Background

Amherst voters approved the ballot question by a margin of nearly three to one (74% voting in favor). 65% of Amherst residents are below the age of 25 and over 30% are under the age of 20. Additionally, Amherst's population is in constant flux, with nearly 5,000 new arriving annually as first year students at UMass, Amherst College, and Hampshire College.

Statement of Principles

Amherst's elected officials have consistently maintained their support for the law and their intent to allow the sale of recreational marijuana within the Town. However, they also recognize that there are several provisions of the law that, if changed, would add clarity and ease implementation:

- **Need for a more flexible local option tax:** the 2% maximum local option tax may not be sufficient to cover expenses related to the legalization of recreational marijuana use and should be flexible enough to cover all costs.
- **Insufficient time to enact local zoning:** the compressed timeline between when initial draft regulations are due and when the Cannabis Control Commission (CCC) begins to accept license applications, which happens to be three months before the final regulations are due, is insufficient to craft a thoughtful bylaw.
- **Lack of local control:** unlike the regulation of tobacco and alcohol, both of which have robust mechanisms for local control, the recreational marijuana law does not provide municipalities with a similar ability to make decisions on individual proposals at the local level.
- **Lack of local ability to control signage:** municipalities should have the right to regulate signage as it fits with the character of the community and not have to conform to a state standard.
- **Automatic allowance of medical dispensaries to sell recreationally:** when Amherst provided letters of support for four medical marijuana dispensaries, it did not anticipate that these facilities would be allowed to sell recreationally without some additional local process permitting that new use, therefore conversions should not be automatic if regulations aren't passed by July 1, 2018.
- **Membership of the Cannabis Control Commission (CCC) and Cannabis Advisory Board (CAB):** both bodies should be broader, more inclusive, and representative of all stakeholders, including municipal, public health, and public safety perspectives.
- **Lack of public health considerations:** the law, or subsequent regulations, should address public health concerns related specifically to dosage, serving size, packaging, and labeling in order to reduce the probability of marijuana overconsumption.
- **Clarify ambiguous terms:** the inclusion of ambiguous terms and conflicting sections of the law should be clarified in order to allow municipalities to easily understand the law and make effective decisions about its implementation.

Each of these principles is described in more detail below. Amherst's position can be broadly broken down into local concerns that affect the municipality's ability to implement the law in a safe and efficient manner and general concerns that would improve the substance of the law.

LOCAL CONCERNS

A More Flexible Local Option Tax

At the hearing on March 27, Chair Jehlen asked why a 2% tax would not be sufficient and what additional costs Amherst expected to incur because of the legalization of recreational marijuana. A large part of the problem is that the size of the recreational marijuana market in Amherst is an unknown. Therefore we can't determine whether 2% of that market is sufficient to cover our anticipated expenses. We also don't have a complete understanding of what the impact will be, and therefore can only provide estimates as to additional costs. It is primarily for these reasons that we couched our request in terms of flexibility to set an appropriate local income tax that will ensure that municipalities can raise enough revenue to cover their costs.

Regardless, Amherst has undertaken to estimate what our costs may be. The process of refining these figures is ongoing, but preliminary data from communities where recreational sales are legal suggests that Amherst's costs will be between \$500,000 and \$1,000,000. In order for the 2% local option tax to be sufficient to cover these costs, the recreational marijuana market in Amherst would need to be between \$25,000,000 and

\$50,000,000. To put those numbers in perspective, Amherst's FY18 operating budget is anticipated at approximately \$23,000,000.

Based on a per capita analysis of the statewide recreational marijuana markets in Colorado, Oregon, and Washington in 2016, the market in Amherst is likely to be between \$2.5 million and \$5.8 million. Adoption of the full 2% local option tax would result in approximately \$50,000-\$115,000 in local tax revenue. Understanding that statewide data may skew the results, info on just the counties with flagship university campuses – Boulder County, CO, and King County, WA (no data available for Lane County, OR) – results in a somewhat larger market. Based on a per capita analysis of these regions, the Amherst market would be between \$3.9 million and \$8.2 million, with the Town netting approximately \$78,000-\$163,000 in additional revenue. As context for that number, the cost to the Town of hiring a police officer or an emergency medical responder, who are Amherst employees and not contracted out to a private firm, is between \$91,000 and \$94,000, including benefits.

Amherst staff, including the Town Manager, Police Chief, Fire Chief, Planning Director, Director of Public Health, and Building Commissioner, as well committees, including the Select Board and Zoning Subcommittee, have already spent hundreds of hours trying to understand the recreational marijuana law and how it will affect our community. We expect that this “hidden cost” will continue to grow as the legislature makes changes to the law, when we see the state regulations, and as we amend our zoning bylaw to allow recreational marijuana establishments.

Amherst will face the additional challenge of having to constantly educate our young population about the law and appropriate marijuana use. 65% of Amherst residents are below the age of 25 and over 30% are under the age of 20. We anticipate needing to educate a large number of new residents on an annual basis due to the fact that each year close to 5,000 new residents join our community as freshman at UMass, Amherst College, and Hampshire College.

This issue is underscored by the fact that is that the price of marijuana in Colorado dropped by 25% in the first two years since recreational use was legalized. That would mean that annual revenues would decrease to approximately \$58,500-\$122,250 after two years. Given our constantly changing population, and the need to provide continuous education to our new residents, Amherst's costs will not decrease at the same rate.

Lack of Time to Enact Local Zoning

Changes to the recreational marijuana law that address when the CCC begins to accept recreational marijuana license applications are necessary because of the confluence of three factors: the deadlines for the CCC to issue initial regulations and adopting final regulations (March 15, 2018 and July 1, 2018, respectively); the April 1, 2018 deadline for the CCC to begin accepting license applications; and the fact that the only local consideration that the CCC must take into account when reviewing license applications is whether the application violates any bylaw in effect at the time it is submitted to the CCC.

Taken together, these three provisions of the legislation reverses the regular process and requires municipalities to pass a local bylaw or ordinance prior to knowing what the final regulations will be. Because the CCC will base its licensing decisions on the bylaws in place at the time of the application, municipalities have an incentive to pass zoning and general bylaws prior to when the CCC begins accepting applications. However, there are three significant problems with this. The first is that it is unreasonable to expect a community to understand the initial regulations, much less draft and adopt appropriate zoning, in the two weeks between when the initial regulations must be issued and when the CCC begins accepting applications. The second is that municipalities with a Town Meeting form of government typically hold their Annual Town Meetings after the CCC will begin accepting applications on April 1, requiring those communities to

call a Special Town Meeting in order to amend their bylaws. The third problem is that if the bylaws don't comply with the final regulations, which may not be adopted until July 1, 2018, the municipality would have to amend the recently passed bylaw(s) at a subsequent Town Meeting.

H.1051 prevents the CCC from accepting applications or issuing licenses if a municipality's city council, select board, or board of alderman has voted to impose a moratorium. The bill also states that the moratorium shall remain in effect until the CCC has published regulations. H.3176 allows municipalities to adopt zoning bylaws pursuant to M.G.L. Chapter 40A and prohibits the CCC from approving a license application that would be in violation of those bylaws.

Lack of Local Control

It is concerning that recreational marijuana does not receive the same level of local control as similar products, such as the sale alcohol and tobacco. In both of these cases, municipalities have the ability to determine, through the local licensing authority or the local Board of Health, respectively, whether a particular location would be suitable for the type of establishment sought. Amherst also has detailed regulations with respect to the sale and use of tobacco products that address a number of issues and similar local regulations ought to be applicable to recreational marijuana. These include the local application process for a Tobacco Product Sales Permit, prohibition of flavored tobacco sales, vending machines, and sales at health care institutions, requirements for landlords to document smoking-related policies for residents, and prohibitions on smoking in the workplace and in public spaces.

As currently written, the only local control that municipalities have is to adopt ordinances or by-laws that are not "unreasonably impracticable" which the CCC will take into consideration when evaluating license applications. Unlike licensing for alcohol and tobacco, which allows municipalities to consider other factors such as traffic, proximity to similar establishments, use of zoning as the only local control over the location of recreational marijuana establishments is a blunt instrument that severely curtails municipalities' ability to appropriately locate these businesses. Imagine if the Alcoholic Beverages Control Commission approved all package store license applications based solely on whether the use was allowed by zoning and then ask yourself why it should work that way for recreational marijuana. The result we are trying to avoid is a recreation of Denver's "Green Mile" which has 11 medical and recreational marijuana establishments along a 1.25 mile stretch of road.

Ability to Regulate Signage

Another issue Amherst would like to see returned to local control is signage. Traditionally, municipalities have been able to determine local ordinances and bylaws regarding signage for commercial establishments that are consistent with each community's unique identity and characteristics. Uniform sign regulations should be applied regardless of the type of business and should not be superseded by state regulations.

GENERAL CONCERNS

Conversion of Medical Facilities to Recreational Facilities

Amherst takes issue with the part of the recreational marijuana law that gives priority to medical marijuana treatment centers to convert to recreational marijuana establishments if the CCC doesn't adopt final regulations by July 1, 2018. Amherst provided letters of support to four medical marijuana dispensaries with the understanding that they would, in fact, be medical in nature. The Town did not anticipate that the law

would allow these dispensaries to sell recreationally, without any municipal input, if the government didn't meet an extremely tight deadline. Although we understand that those establishments that have actually opened for business dispensing medical marijuana have gone through a rigorous vetting process to get to that point, the current law also allows a "reorganized" medical marijuana treatment center that has never sold any product to convert to recreational sales and be given priority to apply for a recreational license.

Applicants for medical marijuana licenses could not proceed past a certain point in the process without a letter of support or non-opposition from the host community. As a community that did not want to prohibit a medical marijuana treatment center in Amherst, the Select Board decided to issue letters of support for each of the applicants, under the impression that the rest of the Department of Public Health and local permitting process would determine which, if any, would actually open. Had the Select Board known that these letters would provide applicants with a "fast track" to opening a recreational marijuana establishment, with no further local input, it would have engaged in a more robust and comprehensive review before issuing any letters of support.

Membership of the CCC and CAB

Amherst would like to see the membership of the Cannabis Control Commission and Cannabis Advisory Board to be broader and include representatives that can provide perspectives from the municipal, public health, and public safety perspectives. We do not believe that a three-member body, such as that proposed for the CCC, will be able to accommodate all of these perspectives and respectfully request that the body is enlarged to five members, as requested by the Massachusetts Health Officers Association and the Massachusetts Municipal Association.

Lack of Public Health Considerations

Amherst would like to see, either in the legislation or through state regulations, restrictions on the packaging and dosage of marijuana edible products to reduce the ability to market to youth and diminish the likelihood of overconsumption. We support the MHOA's proposal to require all marijuana edibles be sold in a single serving size with a limit of 10 milligrams of THC per serving. We also support the MHOA's position that marijuana edibles be packaged in generic, childproof containers that clearly identify the contents with generic names (e.g. not "Pot Tart"), and that the product should be kept away from children.

Clarify Ambiguous Terms

One thing that makes it difficult to plan for recreational marijuana is the lack of clarity in the law. A few examples of this ambiguity are as follows:

- Section 1(d) defines a "experienced marijuana establishment operator" to include "a reorganized marijuana business established by a vote of at least 2/3 of the board of directors of an entity that submitted an application for registration to operate a medical marijuana treatment center to the department of public health before October 1, 2015 and was issued a provisional registration to operate a medical marijuana treatment center by the department of public health before the effective date of this chapter." Why would an establishment that has not actually opened or sold any product be considered "experienced"?
- Section 3(a)(1) states that "zoning ordinances or bylaws shall not prohibit placing a marijuana establishment which cultivates, manufactures or sells marijuana or marijuana products in any area in which a medical marijuana treatment center is registered to engage in the same type of activity." How is "area" defined? What is meant as registered? Provisional certificate of registration? Final

certificate of registration? If a municipality passes a temporary moratorium, does this language preempt the moratorium in those specific “areas”?

- Section 3(a)(2)(ii) states that a vote of the voters is required if a municipality wishes to “limits the number of marijuana retailers to fewer than 20 per cent of the number of licenses issued within the city or town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under chapter 138 of the General Laws.” Does this include both “all alcohol off premises” and “wine & malt off premises” licenses?
- Section 3(b) describes the procedure for voting on whether to allow on-site consumption of marijuana, but it is unclear whether a vote is required to opt-in, or to opt-out. It should clearly state that on-site consumption is prohibited unless and until a municipality has affirmatively voted to allow that use and adopted appropriate ordinances and/or bylaws.

Conclusion

Amherst is committed to supporting the will of the voters and allowing recreational marijuana establishments to operate within the town’s borders. It is also committed to doing so in a safe and deliberate manner that reflects Amherst’s unique characteristics. By advocating for the above changes, the Town will increase the likelihood of a smooth and successful implementation that protects the health and safety of its residents and respects the voters’ decision.