

Town of



# Amherst Massachusetts

OFFICE OF THE SELECT BOARD

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April 13, 2017

The Hon. Stanley C. Rosenberg  
Senate President  
State House, Boston

Dear President Rosenberg,

The Amherst Select Board would like to express its significant concern with the lack of sufficient time to craft a zoning bylaw for recreational marijuana sales and offer several potential solutions. Unlike the typical process, in which the state passes a law, the regulatory agency adopts regulations, and then municipalities draft bylaws in accordance with the legislation and regulations, the process required by the recreational marijuana law essentially forces communities to begin drafting zoning bylaws *before* the final regulations have been adopted.

Recreational marijuana is an entirely new industry and municipalities should be given time to carefully craft appropriate bylaws that reflect their individual community's values and that are aligned with state regulations. We believe that this can be accomplished, without unnecessarily delaying implementation, by allowing communities to adopt a temporary moratorium on recreational marijuana establishments through the normal local legislative process. For that reason, we respectfully request that you sponsor or support a change to the law that would add a new subsection to the end of Section 3 of the law (Local Control) as follows:

(e) Notwithstanding any other provisions of this law, a municipality may enact a temporary moratorium on recreational marijuana establishments. The moratorium shall be enacted through the municipality's typical legislative process and shall be limited in time so as not exceed 180 days after the Cannabis Control Commission has adopted final regulations pursuant to Section 4 of this law. If so stated in the moratorium, it may prohibit recreational sales of marijuana at medical marijuana treatment centers and in any area where a medical marijuana treatment center is registered. Further, the Cannabis Control Commission shall refuse to accept license applications from any recreational marijuana establishment seeking to locate in a municipality that has adopted a moratorium until such a time as the moratorium has expired.

This solution provides communities that are interested in allowing recreational marijuana establishments sufficient time to determine appropriate bylaws based on the final regulations. Communities that wish to move forward more quickly can choose not to enact a moratorium, or adopt a moratorium that is shorter in duration. Municipalities that do not want recreational marijuana establishments at all will continue to have the option of an outright ban through a vote of the voters.

Another potential solution would be to create a mechanism for a municipality to request that the Cannabis Control Commission (CCC) not accept any applications for recreational marijuana establishments until

after the municipality has concluded its Annual Town Meeting. Although the CCC may not have adopted final regulations, and there is still only a short period of time to craft bylaws based on the initial regulations, this approach would provide communities with some flexibility. If this is the preferred solution, it could be accomplished by making the following changes.

- 1) Add a new subsection to the end of Section 5 (Licensing of marijuana establishments) of the law as follows:
  - (d) If a municipality makes a written request to the Cannabis Control Commission prior to April 1, 2018 seeking a delay in accepting license applications until 120 days after the municipality has concluded its 2018 Annual Town Meeting, the Cannabis Control Commission shall honor that request. Any application for a recreational marijuana establishment received prior to the conclusion of the municipality's 2018 Annual Town Meeting shall be evaluated for compliance with the municipal bylaws as amended by the 2018 Annual Town Meeting.
- 2) Amending Section 5(b) to read "Except as provided in subsection (c) **and subsection (d)** of this section..." (new language in **bold**).

We are also aware of two pieces of pending legislation that could help municipalities craft thoughtful bylaws. Similar to our first suggestion, 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. Taking a different approach, 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. Without taking a position on other aspects of these bills, the changes noted above would make the law easier to implement from a municipal perspective. However, we believe our suggested language provides the most clarity and would be more beneficial to municipalities.

Changes to the recreational marijuana law 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.

Thank you for this opportunity to express our concerns about how the current timing of the law creates a difficult situation for municipalities who want to be thoughtful about how they accommodate this new industry into their communities. We hope that you carefully consider our proposal. Please contact the

Town's Economic Development Director, Geoff Kravitz, at (413) 259-3079 or [kravitzg@amherstma.gov](mailto:kravitzg@amherstma.gov) if you or your staff would like to discuss this issue or our proposal in more detail.

On behalf of the Amherst Select Board,

Alisa Brewer  
Chair, Amherst Select Board