

Memorandum

To: Essex Planning Commission
From: Darren Schibler, Town Planner
Date: March 25, 2022
Subject: Cannabis and Municipal Zoning Regulations

Summary

The Town must consider how to apply zoning regulations to production and sale of recreational cannabis products now that such uses are legal at the state and local level.

Background

Act 164 (passed in 2020) and Act 62 (passed in 2021) legalized the production, processing, and testing of recreational cannabis products (those containing psychoactive compounds). Similar to alcohol and tobacco, these laws specifically delegated the authority to allow retail sale of cannabis to municipalities by an opt-in, requiring a majority vote by Australian ballot at a duly warned and noticed public meeting.

The Town of Essex passed such a measure on March 1, 2022. Note that municipalities can choose to later vote to rescind the vote, but any retailer that opened before the rescission will be allowed to continue operating. Additional information can be found on the [Town's cannabis webpage](#) and [Q&A document](#) published in advance of the vote.

The State Cannabis Control Board (CCB) has developed [proposed rules](#) that provide clarity on state regulation of cannabis establishments and operations. The State CCB has also created [guidance for municipalities on local cannabis regulation](#). In general, the state rules address common concerns and criteria typically regulated by local ordinances, including:

- Different license types and tiers for cultivators, manufacturers, testing laboratories, retailers, and integrated operations that perform all of these activities;
- Background checks and identification requirements for persons involved;
- Standards for energy efficiency, pesticide use, waste management, sanitation, and product potency / quality;
- Requirements for product marketing, signage, packaging, labeling, and samples, including regulations against marketing to underage users and required buffers from schools for retail sales (see the [map showing the buffer zones in Essex](#)) – note that these buffer zones cannot be modified by municipalities;
- Required site management and security practices, including fencing, lighting, screening from roadways, cameras, and alarms;

Local zoning implications

Within the laws, rules, and guidance, it is abundantly clear that local zoning bylaws must treat cannabis establishments the same as other similar uses; for instance, a municipality could not impose different rules for a cannabis retailer compared to other forms of retail. By the same token, cannabis establishments still must obtain local zoning approvals and permits, which conditional on the applicant's compliance with state regulations.

There are no state-mandated zoning designations for cannabis establishments, so municipalities have some discretion in determining which defined use types apply to cannabis establishments, and the zoning districts where those uses are allowed.

For instance, a cannabis retailer would fall under the “Retail Sales” use in Essex, and would be subject to all relevant zoning requirements, including allowed zoning districts, review procedures (i.e., zoning permit, site plan approval, and/or conditional use approval), and design standards otherwise applicable to retail sales uses. It appears most other license types would fall under the definitions “Light manufacturing” (possibly including indoor cultivation), “Research and Testing Laboratory,” or “Warehouse, Storage, and Distribution.” Note that smaller establishments may fit the criteria of “Home Business” or “Home Occupation,” but would be subject to state licensing as well as the provisions of Section 4.9 of the *Essex Zoning Regulations* (ZR).

Therefore, except for outdoor cannabis cultivation (discussed below), no amendments to Essex’s regulations are necessary to address the emergence of cannabis establishments.

Cannabis Cultivation Complications

One remaining uncertainty is whether zoning bylaws can regulate outdoor cannabis cultivation. Under [24 V.S.A. § 4413\(d\)\(1\)](#), most farming is exempt from local zoning bylaws. However, [7 V.S.A. § 869](#) specifically states that cannabis establishments, including outdoor cultivation, are not considered “farming” as defined for land use regulation, and therefore is subject to local zoning¹.

The primary reason for this inconsistency is that under federal regulation, cannabis is still a Schedule I controlled substance, and thus the VT Agency Agriculture cannot regulate it. If federal regulations change, it is likely that the Legislature would reclassify outdoor cannabis cultivation as “farming” (but still generally exclude cannabis cultivation from tax and regulatory benefits generally reserved for agricultural products). Until then, it is unclear how outdoor cultivation should be regulated locally, but options for Essex include:

- Specifically exempt cannabis cultivation from zoning under ZR Table 1.1(A).
- Classify cannabis cultivation under the existing definition of “Agriculture,” but note that it is not specifically exempt from local zoning under 7 V.S.A. 869.
 - This would be an allowed in every zoning district, but would require a zoning permit, and the requirements of ZR Section 4.2 would apply (which, for cannabis cultivation, appears to require a 300-foot setback for farm buildings except in the Agricultural-Residential (AR) and Conservation (C1) zones).
- Classify cannabis cultivation as “light manufacturing.”
 - This would be a permitted use in the Industrial (I1) and Resource Preservation District-Industrial (RPD-I) zones, and a conditional use in the

¹ There is currently a bill in the Legislature, S.188, that would classify “small cultivators” (having less than 1,000 square feet of plant canopy) as “farming” under 7 V.S.A. § 869.

Retail-Business (B1) and various mixed-use districts. This is more appropriate for indoor or mixed indoor / outdoor cultivation.

- Create a separate definition for “cannabis cultivation.”
 - This would allow the Town to specify it as a permitted or conditional use within various zoning districts.
 - It would also allow creation of more specific use standards, which could address the differences between indoor and outdoor cultivation.

Another complexity of cultivation is that, depending on the license tier (determined by the area of plant canopy), draft state CCB rules 2.4.1-2.4.3 require outdoor and mixed indoor / outdoor cultivators to use one or more of a list of outdoor security practices, which may include fencing and motion-activated lighting. In addition, all outdoor cultivation must screen the crop from view of a public road with fencing, hedges, or building structures.

These requirements may overlap with Essex’s site plan review standards (ZR Section 5.6), though they do not appear to conflict. However, such requirements may have a significant visual impact in rural areas if outdoor cultivation is allowed there; furthermore, they may conflict with standards in the Scenic Resource Protection Overlay (SRPO) district, specifically ZR Table 2.20(G)(4) and 2.20(I). Approaches to address these issues include:

- Exempt outdoor cannabis cultivation from lighting, fencing, and screening requirements to avoid potential conflict with state rules.
- Require site plan review for outdoor cannabis cultivation and apply local lighting, fencing, and screening standards in addition to state rules.
- Strengthen standards for the SRPO district, including specific requirements relating to outdoor cannabis cultivation.

The Town should engage the general public, and specifically outdoor and mixed cultivators, to ensure any regulations will balance the needs of the community and new cannabis enterprises.

Costs

There would be no cost to draft regulations, though there may be incidental / minor costs for legal reviews, especially if state regulations are not clear. Noticing draft regulations would cost approximately \$70-100 for each newspaper advertisement, along with minor costs to print copies of draft documents for public review; these costs can be minimized if combined with other proposed amendments. Public engagement associated with these efforts may incur incidental costs for surveys, events, and flyers / advertisement.

Recommendation

No action is necessary to address cannabis establishments except for outdoor cultivation. Staff seek Planning Commission guidance on this specific use before making a policy recommendation.