

October 31, 2023

Representative Karen Dolan
Representative Lori Houghton
Representative Michael McCarthy
Representative Leonora Dodge
Representative Rey Garofano
Senator Ruth Hardy
Senator Philip Baruth
Senator Martine Gulick
Senator Tanya Vyhovsky
sent via email

Dear Representatives Dolan, Houghton and McCarthy, Dodge, Garofano and Senators Hardy, Baruth, Gulick and Vyhovsky,

On behalf of the Essex Junction City Council, I am writing to request a legislative amendment to the state's cannabis statutes regarding outdoor cannabis cultivation. Now that the legislature has established a successful and sustainable cannabis marketplace, we are requesting a small adjustment. We are asking for an understanding and recognition that outdoor cannabis cultivation may not be suitable in all locations.

Following the enactment of cannabis legalization in the state, Essex Junction added each type of cannabis establishment to its Land Development Code (i.e. zoning regulations) and defined where each type was permitted in the City. While municipalities are not permitted to prohibit these establishments, the intent was to allow municipalities to use zoning¹. Essex Junction's Land Development Code does permit each cannabis establishment in a zoning district within the City. Outdoor cannabis cultivation is permitted in the city's Planning Agriculture zoning district.

It is my understanding that the legislature made the outdoor cannabis cultivation changes in Act 65 (H.270) because some municipalities were establishing rules that prevented outdoor cannabis cultivation in rural areas. Conceivably the nuisances in these areas are low, and the Legislature wanted to prohibit municipalities from preventing outdoor cannabis cultivation establishments in these circumstances.

The City of Essex Junction is markedly not rural. Essex Junction is a 4.6 square mile walkable city with water, sewer and bus service throughout. Each of our neighborhoods hosts one of our five K-12 school buildings. The city is working to address the severe housing shortage in the region and the state. In fact, the city has already adopted the zoning changes as required by the Housing Opportunities Made for Everyone (HOME) Act of 2023. I point this out because there are other state policies our city is following that will likely conflict with the Act 65 policy of allowing outdoor cannabis cultivation everywhere.

As an example, Act 65 has resulted in the inability to enforce the zoning regulations that define appropriate locations for outdoor cannabis cultivation. Therefore, a Tier 1 outdoor cannabis cultivation establishment is

¹ The basis for these Land Development Code amendments lie in this premise: "A town's bylaws may require a particular cannabis establishment be located in a specific district, but the CCB has not designated that, the statute (24 VSA 4414) has designated that," Julie Hubbard of the CCB, VLCT's *Regulating Cannabis What Municipal Officials Need to Know* webinar, and particularly this section of the [CCB's presentation](#) at minute 37:29 to 38:11.

located approximately 30 to 40' from the window of the neighboring home. In urban environments, like Essex Junction, neighbors live more densely and the smell from cannabis plants permeates and crosses property lines into other neighbor's backyards and windows. These neighbors have found that their windows must be kept closed even on hot summer days, and the odor has limited their use and enjoyment of their back yards.

Additionally, this outdoor cannabis cultivator is located within the 500' buffer of a school property. Currently this rule only comes into play for retail cannabis establishments. If the cultivation were indoor, there would likely be no discernable smell. However, the odor of outdoor cannabis cultivation permeating a school property seems to be misaligned with appropriate public health policy. The prevalence of cannabis cultivation in such a dense environment exposes youth and those in recovery to both potential and real harms.

Therefore, as we work to achieve the state policies established in the HOME Act, our housing density will increase, and this conflict with outdoor cannabis cultivation establishments in our urban environment will likely intensify.

Our recommendation is to alter the changes made in Act 65 of 2023. The suggested change is to allow municipalities the ability to use zoning regulations or ordinances (as allowed in the original legislation) to set reasonable regulations that would eliminate the impact of outdoor cannabis cultivators on neighboring properties in areas served by water and sewer² (a proxy for urban areas) if they so choose. This is the same geographic area associated with the HOME Act. In our case, this would allow us to use zoning to permit outdoor cultivation in the district where we have an existing farm and we could create a suitable buffer to minimize the impact on existing residential properties.

For your reference, I have attached a document with some further background that defines the particular sections of Act 65 that have caused this issue.

Thank you very much for your consideration and attention to this matter. Please let me, or City Manager Regina Mahony, know if you have any questions. We would be happy to provide any further information or testimony.

Sincerely,



[Raj Chawla \(Nov 1, 2023 16:16 EDT\)](#)

Raj Chawla
City Council President

Cc:
City Council
Chris Yuen, Community Development Director
Charlie Baker, Chittenden County Regional Planning Commission Executive Director
Ted Brady, VLCT Executive Director

² Sewer service areas are quite limited in VT: <https://geodata.vermont.gov/datasets/VCGI::vt-sewer-service-areas/explore?location=44.146806%2C-72.065178%2C8.82>. Water service areas are more extensive, but we are suggesting areas with both. Therefore, this is not a significant area.

Background: In September 2022, the City incorporated cannabis establishments into its Land Development Code (LDC) and established a Local Cannabis Control Board. Therefore, cannabis establishments in Essex Junction will need to comply with the LDC and get a Local Cannabis Control Board license. In the case of outdoor cannabis cultivation, the Use Table in Chapter 6 of the City's LDC currently limits Cannabis Cultivation to the Planned Agriculture (PA) zoning district. At first glance, it may appear that the outdoor Cannabis Cultivation is in contravention of local regulations and should not be allowed; however, state statute limits municipal authority to enforce these rules. During the 2023 legislative session, the State House and Senate passed H.270, which amends cannabis regulation statewide.

Under H.270, 7 V.S.A. § 869(f) has been amended such that all licensed outdoor cannabis cultivators shall be regulated in the same manner as "farming" and not as "development" for the purposes of permitting, and shall *"not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117 in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. § 4413(d)(1)(A)"*.

This means that the City cannot regulate outdoor cannabis cultivators any more than it can regulate agriculture. Issues, such as the height of structures, and lighting, when applied to outdoor cannabis cultivation, are beyond the municipal authority of the City, and fall under the jurisdiction of the State's Cannabis Control Board.

Furthermore, H.270 amends 7 V.S.A. § 863 Regulation by Local Government, to state that:

"(d) A municipality shall not:

(1) prohibit the operation of a cannabis establishment within the municipality through an ordinance adopted pursuant to 24 V.S.A. § 2291 or a bylaw adopted pursuant to 24 V.S.A. § 4414, or regulate a cannabis establishment in a manner that has the effect of prohibiting the operation of a cannabis establishment

(2) The [Local cannabis control commission] may condition the issuance of a local control license upon compliance with any bylaw adopted pursuant to 24 V.S.A. § 4414 [zoning statute] or upon regulating signs or public nuisances adopted pursuant to 24 V.S.A. § 2291, except that ordinances may not regulate public nuisances as applied to outdoor cultivators that are regulated in the same manner as the Required Agricultural Practices under subdivision 869(f)(2) of this title."

As a result, municipalities now have limited authority to create and enforce ordinances that attempt to regulate the public nuisances, such as odor, or light, resulting from outdoor cannabis cultivation. Furthermore, the purview of the Local Cannabis Control Board is limited and can be overturned by the VT Cannabis Control Board if they feel a municipality has overreached.






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Final Audit Report

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