



May 1, 2024

Senator Kesha Ram Hinsdale
Senator Alison Clarkson
Senator Randy Brook
Senator Ann Cummings
Senator Wendy Harrison

sent via email.

Dear Senators Ram Hinsdale, Clarkson, Brook, Cummings, and Harrison,

It is my understanding that the legislature made the outdoor cannabis cultivation changes in Act 65 (H.270) because several 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. I further understand from conversations in House Government Operations, that the issue of cannabis cultivation in population centers was not considered as part of the effort to fix this issue in 2023. We are asking for that consideration in with these proposed changes.

In response to recently submitted testimony regarding Section 16 and 17 of H.612 and outdoor cannabis cultivation, I am requesting that you keep the proposed setbacks provided in H. 612 as passed by the House, specifically 25 feet in a cannabis cultivation district, 100 feet outside of a cannabis cultivation district and 10 feet if no zoning exists. The setbacks recognize that there are odor and other impacts, and that commercial cultivation, even at the Tier 1 level, has a marked change on the character of a neighborhood. We are not attempting to discriminate against growers. We are trying to preserve the character of our residential neighborhoods and remain a welcoming and safe city. We feel strongly that we need the ability to determine where it is and is not appropriate to host this activity.

The City of Essex Junction (pop. 11,000) 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. Our home lots are small, with generations of additions and modifications. Setbacks between property line and building can be less than 10 feet in many neighborhoods. The city is working to address the severe housing shortage in the region and the state and has 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.

I believe proposed changes illustrate our point that commercial cultivation in residential or dense communities brings complications. I see in Section 12 that there is an effort to exempt "farm buildings" from the definition of "public buildings" as they relate to fire safety requirements. This could be a great risk to a neighborhood where a neighbor's structure or farm building might be as close as five feet from a neighbor's home or garage. This may make sense in rural area but is a public safety issue in a city. This section also contains a request to waive the restriction on the number of employees for a Tier 1 operation.

In section 19 of H. 612, I see 7 V.S.A. § 904 (a)(2) contains proposed language that would allow Tier 1 and Tier 2 cultivators to sell directly to consumers. This would further exacerbate the issue of having a business activity that would exceed a home occupation in a residential neighborhood, a significant change of character.

Taken together, the placement of cannabis cultivation in residential neighborhoods, the changes to allow direct-to-consumer sales from those establishments and the increase in the number of employees working at these commercial operations would result in a profound change to our residential neighborhoods, permanently altering the character and safety of our community.

Please understand, while Essex Junction is currently before you as single city experiencing this issue, we will certainly not be the last community to struggle with this. We ask that you keep the setbacks as proposed and make them retroactive so that we can apply the new regulations to new and existing permits and decide at the local level the most appropriate locations for these operations, in balance with other municipal activity.

Thank you very much for your consideration and attention to this matter. I am traveling Thursday, May 2, but I may be available to testify virtually if needed. Please let me, or City Manager Regina Mahony, know if you have any questions.

Sincerely,

Raj Chawla
City Council President

Cc:
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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.