

ACT 166, SECTION 18 REPORT OUTDOOR SITING OF CANNABIS & ADVERTISING

JANUARY 15, 2025

*James Pepper, Chair
Julie Hulburd, Commissioner
Kyle Harris, Commission*

Olga Fitch, Executive Director

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REPORT SUMMARY

This report, prepared by the Vermont Cannabis Control Board (CCB) under the directive of Act 166 (2024), Section 18, examines the regulation of outdoor cannabis cultivation and advertising within Vermont. It presents comprehensive analyses and recommendations to support legislative decision-making while balancing public health, municipal interests, and the economic viability of Vermont's cannabis industry. The report reflects the findings and insights of a stakeholder workgroup that included representatives from municipalities, industry advocates, public health advocates, and equity-focused groups.

1. SUMMARIZE THE CURRENT IMPACT OF OUTDOOR CULTIVATION ON LOCAL MUNICIPALITIES

The feedback provided through an exploratory survey and roundtable discussion indicates the impact of outdoor cultivation on local municipalities appears to be minimal in many towns. However, where there are conflicts the impact can create unique challenges. As a result, it's not feasible to provide a single summary of impact that would be universally applicable across municipalities.

There appears to be consensus among towns that participated in this process that certain aspects of Act 166 (2024) need further clarification to ensure consistent and effective regulation. Those are:

Standardized guidelines for the measurement of setbacks and processes for resolving conflicts related to setbacks are needed to avoid confusion and minimize disputes.

Guidance on the applicability of setback provisions on the operation of existing licensees is needed.

Guidance on how preferred Cultivation Districts can be enforced. Designation of allowable uses rather than set districts was also discussed.

The Board suggests measuring the setbacks from the property boundary or highway to the nearest stalk of the nearest plant at the point at which that plant enters the ground or planting pot. Further the Board suggests excluding barns and other processing buildings or areas from this measurement.

The Board suggests that setbacks not apply to existing outdoor cannabis cultivators and notes that clarity regarding if municipalities or the Board is responsible for enforcing the setbacks is also needed.

2. SUMMARIZE THE IMPACT OF ESTABLISHING VARIOUS SITING REQUIREMENTS TO EXISTING LICENSED OUTDOOR CULTIVATORS

The Board believes that the impact of establishing various siting requirements to existing licensed outdoor cultivators may have a significant impact and is concerned about the impact of siting provisions on the safety, efficiency and equity of the market.

The Board is unclear if setback and cultivation district requirements impact current licenses or if these requirements should be considered when many of these licensees seek renewal over the next few months.

Based on a preliminary mapping study, the Board believes that 11 outdoor cannabis cultivation licenses are directly impacted by the setback provisions however, there may also be impacts that are beyond what was immediately identifiable in this preliminary study.

The Board also understands the desire of municipalities to regulate in their jurisdiction with consideration to the local constituency, suggests removing the automatic nature of the setback provision from statute but allowing towns to create setbacks using the limits set in Act 166 (2024) through a process that includes their Local Cannabis Control Commission.

3. ADDRESS WHETHER AND HOW TO AUTHORIZE MUNICIPALITIES TO ESTABLISH LOCAL CULTIVATION DISTRICTS.

After extensive discussion, the Board recommends reevaluating the utility of Cultivation Districts as established in Act 166 and exploring alternative approaches that better balance local control with equitable market access.

Exploratory polling among municipalities revealed that only 2% are certain that they will take steps to create a Cultivation District. While Act 166 allows towns to create districts where cultivation is preferred, it is unclear if this means that cultivation can or cannot occur in other areas. Further, the establishment of districts could inadvertently undermine the Legislature's goals as outlined in 7 V.S.A. § 843 (a), 7 V.S.A. § 903(a) and 7 V.S.A. § 904a(a). Given the limited availability of land available for cannabis cultivation, restricting further access to land could through additional regulation may present challenges in meeting the goals set for the Board by statute.

Further, cultivation districts could present logistical and operational challenges for cultivators. For example, clustering multiple cultivation sites within a single district could increase the risk of issues such as contaminant drift.

4. ADDRESS WHETHER AND HOW OUTDOOR CULTIVATION OF CANNABIS SHOULD BE ENTITLED TO THE REBUTTABLE PRESUMPTION THAT CULTIVATION DOES NOT CONSTITUTE A NUISANCE UNDER 12 V.S.A. CHAPTER 195;

The Cannabis Control Board recommends that outdoor cultivation continue to be entitled to the rebuttable presumption that it does not constitute a nuisance in the same manner as farming.

This recommendation is based on several factors the environmental benefits of outdoor cultivation and the equitable treatment of cannabis relative to hemp cultivation.

5. RECOMMEND WHETHER LOCAL CANNABIS CONTROL COMMISSIONS ESTABLISHED PURSUANT TO 7 V.S.A. CHAPTER 33 SHOULD BE GRANTED ADDITIONAL AUTHORITY TO REGULATE OUTDOOR CANNABIS CULTIVATORS.

Currently, most municipalities have not formed Local Control Commissions. The Board supports removing the automatic nature of the setback provisions and expanding of authority to local control commissions to include participating in the development of setback provisions within the limits set by Act 166.

Further the Board would support the future expansion of the role of Local Control Commissions as it relates to oversight of new license types such as event permitting, on-site consumption permits, or activities that would impact the flow of traffic such as curbside pick-up and drive through, should those exist in the future.

6. ADDRESS THE IMPACT OF MODIFYING THE LAW GOVERNING CANNABIS ADVERTISING.

Studies provided to the Board by health and prevention advocates highlight the critical need to protect public health and prevent youth access. Any changes to advertising laws should prioritize these considerations. While cannabis products cannot legally cross state lines, advertising faces no such restrictions. Moreover, the Board's jurisdiction is limited to cannabis establishments licensed in Vermont, leaving out-of-state cannabis companies and multi-state brands advertising in Vermont exempt from Vermont's strict advertising standards. This regulatory gap places Vermont's licensed establishments at a disadvantage, as they compete with out-of-state brands not bound by rules designed to limit youth appeal and include public health warnings.

The Board believes that incremental changes to advertising laws could support Vermont's nascent market in its effort to compete with out-of-state brands and that these changes can be done with public health in mind.

PURPOSE & SCOPE

This report is submitted to the Senate Committees on Government Operations and on Economic Development, Housing and General Affairs, and the House Committees on Government Operations and Military Affairs and on Commerce and Economic Development as mandated by Act 166 (2024), Section 18, which directs the Board to:

- (1) summarize the current impact of outdoor cultivation on local municipalities;
- (2) summarize the impact of establishing various siting requirements to existing licensed outdoor cultivators;
- (3) address whether and how to authorize municipalities to establish local cultivation districts;
- (4) address whether and how outdoor cultivation of cannabis should be entitled to the rebuttable presumption that cultivation does not constitute a nuisance under 12 V.S.A. chapter 195;
- (5) recommend whether local cannabis control commissions established pursuant to 7 V.S.A. chapter 33 should be granted additional authority to regulate outdoor cannabis cultivators.
- (6) the Cannabis Control Board shall address the impact of modifying the law governing cannabis advertising.

Further, as required by Act 166, the Cannabis Control Board consulted with:

Vermont League of Cities and Towns

Cannabis Equity Coalition

Vermont Medical Society

Cannabis Retailers Association of Vermont

OUTDOOR CANNABIS CULTIVATION DEFINED

Cannabis Control Board Rule 1.1.3 defines outdoor cultivation as cultivation without the use of artificial lighting. Outdoor cultivators may use some artificial lighting necessary to keep plants in a vegetative state during the winter and early spring before plants can be outdoors.

The Cannabis Control Board licenses two types of outdoor cultivation, cultivators who grow entirely outdoors (outdoor cultivation) and cultivators that grow a portion of their approved square footage indoors and a portion outdoors (mixed cultivation). License Tiers and square footage for outdoor and mixed licenses are as follows:

Outdoor Cultivation Tier	Max Square feet of Canopy
Tier 1	1000
Tier 2	2,500
Tier 3	5,000
Tier 4	10,000
Tier 5	20,000
Tier 6	37,500

Mixed Cultivation Tier	Nature of Business
Tier 1	May cultivate up to 1,000 sq ft of plant canopy and up to 125 plants outdoors at the same premises
Tier 2	May cultivate up to 2,500 sq ft of plant canopy indoors and up to 312 plants outdoors at the same premises
Tier 3	May cultivate up to 1,000 sq ft of plant canopy and up to 625 plants outdoors at the same premises
Tier 4	May cultivate up to 1,000 sq ft of plant canopy indoors and up to 1250 plants outdoors at the same premises
Tier 5	May cultivate up to 1,000 sq ft of plant canopy indoors and up to 2,500 plants outdoors at the same premises

THE ROLE OF THE BOARD:

When approaching this report, the Cannabis Control Board looked at each question through the lens its enabling statute, focusing on three specific statutory sections that directly relate the issue at hand:

- 7 V.S.A. § 843 (a) Creation. There is created within the Executive Branch an independent commission named the Cannabis Control Board for the purpose of safely, equitably, and effectively implementing and administering the laws enabling access to adult-use cannabis in Vermont
- 7 V.S.A. § 903(a) Priorities; business and technical assistance. The Board shall issue licenses pursuant to this chapter as determined according to a system of priorities adopted by rule by the Board. The system of priorities shall require consideration of criteria, including: (2) whether the applicants would foster social justice and equity in the cannabis industry by being a minority or women-owned business
- 7 V.S.A. § 904a(a) Small Cultivators. It is the intent of the General Assembly to move as much of the illegal cannabis market as possible into the regulated market for the purposes of consumer protection and public safety. It is also the intent of the General Assembly to encourage participation in the regulated cannabis market by small, local farmers. In furtherance of these goals, the Board shall consider policies to promote small cultivators as defined in section 861 of this title.

BACKGROUND

Cannabis sativa L., commonly known as marijuana, carries a complex cultural, social, and legal history. Its use dates back thousands of years, with ancient civilizations in China, India, Japan, and the Himalayan region utilizing all parts of the plant for purposes ranging from textiles and food to medicine, libations, and spiritual ceremonies (Booth, 2003). By the 18th century, global attitudes toward cannabis were diverse, with some countries embracing its uses while others moved to criminalize its possession. This divergence in perspectives set the stage for the complex regulatory landscape that continues to evolve today.

In the 19th and 20th centuries, societal perceptions and policies around cannabis began to shift dramatically. In the United States, cannabis became increasingly stigmatized, with its use framed as a social vice (Booth, 2003). The Marijuana Tax Act of 1937 marked the beginning of federal prohibition, which was later solidified by the Controlled Substances Act of 1970, classifying cannabis as a Schedule I substance. Despite these restrictions, researchers like Raphael Mechoulam advanced the scientific understanding of cannabinoids, uncovering the pharmacological potential of cannabis. Meanwhile, the War on Drugs disproportionately impacted marginalized communities, with Black individuals nearly four times more likely to face arrest for cannabis possession than their white counterparts, despite similar usage rates (ACLU, 2020 & ACLU, 2013). These policies resulted in long-term consequences, including higher incarceration rates and systemic barriers to employment, housing, and education. Recent cannabis legalization efforts have aimed to address these harms through social equity programs and investments in affected communities.

Public attitudes toward cannabis began to shift in the late 20th century, driven by scientific research and social movements. The therapeutic use of cannabis gained attention during the AIDS pandemic, leading California to pass the Compassionate Use Act in 1996, which legalized medical cannabis for palliative care. This groundbreaking legislation paved the way for other states to adopt medical use and eventually adult-use programs. Today, at least 39 states have established or are developing cannabis programs for medical or recreational use.

CANNABIS & HEMP

The Congressional Agriculture Improvement Act of 2018, commonly known as the Farm Bill, marked a significant shift in cannabis policy in the United States. This legislation formally defined *hemp* as *Cannabis sativa* L. containing no more than 0.3% THC by dry weight, effectively removing it from the Controlled Substances Act. Conversely, *cannabis*—defined as *Cannabis sativa* L. with a THC concentration of 0.3% or more by dry weight—remains classified as a controlled substance. In essence, hemp and cannabis originate from the same plant species and are distinguished by their THC content.

In Vermont, the regulation of hemp production was regulated by the Agency of Agriculture, Food and Markets from 2018 to 2022 when oversight of hemp cultivation was given to the USDA. All

cannabinoids, including synthetically or hemp derived, are regulated by the CCB per Act 158 (2022) Section 10 which says “The Board shall have the authority to regulate synthetic cannabinoids and hemp-derived cannabinoids, including delta-8 and delta-10 tetrahydrocannabinol).”

CONTROLLED SUBSTANCES ACT AND STATE CANNABIS PROGRAMS

Cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA) of 1970, meaning it is considered to have no accepted medical use and a high potential for abuse. However, the federal government has historically exercised discretion in enforcing these laws. Key policy memos, such as the Cole Memorandum issued by the Department of Justice in 2013, provided a roadmap for states to establish cannabis markets. The memo outlined federal policy expectations for states, such as preventing cannabis distribution to minors, diversion of cannabis across state lines, and activities involving criminal organizations, effectively allowing states to regulate cannabis within their borders if they adhered to these priorities.

Although the Cole Memorandum was rescinded in 2018, subsequent federal budgets have included the Rohrabacher-Farr Amendment (later referred to as the Rohrabacher-Blumenauer Amendment), which prohibits the Department of Justice from using federal funds to interfere with state medical cannabis programs.

With these policy guides in place, states have created cannabis programs within state their boarders, cannabis remains a Schedule 1 substance under the CSA, this status prohibits the interstate transport of cannabis, meaning the entire supply chain from seed to sale must exist entirely with in state borders.

CANNABIS STATUTES IN VERMONT

In Vermont, medical cannabis was legalized in 2004, allowing individuals with qualifying conditions who registered with the state to possess and cultivate limited quantities of cannabis. In 2011, the state authorized the establishment of licensed medical dispensaries. These dispensaries were permitted to cultivate, process, and sell cannabis exclusively to individuals registered in Vermont’s Medical Marijuana Program.

In 2013, the Legislature decriminalized the possession of up to one ounce of cannabis for personal use, regardless of registration with the state’s medical marijuana program. In 2017, Governor Phil Scott established the Marijuana Advisory Commission to evaluate the potential for commercial cannabis. A year later, in 2018, Vermont legalized the possession and home cultivation of cannabis, allowing individuals to grow a small number of plants at home for personal use. In 2020, the State Legislature passed Act 164, which created the Cannabis Control Board and legalized adult-use cannabis, with the first legal retail sales commencing in 2022.

Today, the Cannabis Control Board oversees the regulation of the entire cannabis marketplace, including cultivators, manufacturers, testing laboratories, wholesalers, and retailers. In addition to adult-use cannabis, the Board regulates Vermont's Medical Marijuana Program. While the cultivation of hemp is under the jurisdiction of the USDA, the board does regulate products derived from hemp.

OUTDOOR CANNABIS CULTIVATION REGULATION IN VERMONT

Vermont's approach to outdoor cannabis cultivation has evolved toward a more inclusive and farmer-friendly regulatory framework while addressing concerns about security, visibility, and land use. Act 164 (2020) laid the groundwork by requiring cultivation to occur in an "enclosed, locked facility" and excluding cannabis cultivation from being regulated as farming under most circumstances. Small cultivators operating on land enrolled in the Current Use program were granted limited protections, but the overarching intent was to transition illegal cannabis activity into the regulated market and encourage participation from small, local farmers. The Act tasked the Board with creating rules to reduce barriers for small cultivators, fostering greater accessibility to the legal industry.

Significant changes came with Act 158 (2022), which replaced the enclosed facility requirement with a more practical standard: cultivation areas needed only to be screened from public view and accessible to authorized individuals aged 21 or older. This act also allowed outdoor cultivation on land subject to Vermont's Required Agricultural Practices (RAPs) to receive some of the benefits of "farming," most notably exemption on Act 250 requirements and certain municipal permitting. Act 65 (2023) further expanded outdoor cultivation opportunities by granting outdoor cultivators additional protections including a heightened legal standard over prospective nuisance lawsuits using the same standard that applies to other agricultural activities. Together, these changes reflect Vermont's commitment to supporting small-scale cannabis farming and integrating outdoor cultivation into its agricultural landscape.

Act 166 (2024) introduced new measures to align outdoor cannabis cultivation with municipal planning efforts. Municipalities can now designate Cannabis Cultivation Districts where outdoor cultivation is encouraged and presumed not to impact the character of the area negatively, though cultivation outside these districts cannot be prohibited. Setback requirements were also established, varying by location, to balance cultivation with local land-use considerations. Additionally, Act 166 directed the Cannabis Control Board to produce this report, underscoring Vermont's ongoing efforts to refine cannabis policy and support a sustainable, equitable industry

CANNABIS AND LOCAL CONTROL IN VERMONT

7 V.S.A. § 863 allows municipalities to play a role in regulating cannabis businesses within their jurisdictions, though their authority is carefully defined to balance local control with statewide consistency. Municipalities can choose whether to permit cannabis retailers by holding a public vote to "opt-in." This provision ensures that communities have a direct say in whether retail cannabis establishments can operate in their area. Other types of cannabis businesses, such as cultivation, manufacturing, and testing facilities, are not subject to local opt-in requirements. However, municipalities can regulate cannabis establishments through local ordinances, zoning

bylaws, or permitting processes, but these regulations cannot prohibit the operation of an establishment through bylaw. However, 7 V.S.A. § 863(d) notes that a municipality cannot:

“(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) condition the operation of a cannabis establishment, or the issuance or renewal of a municipal permit to operate a cannabis establishment, on any basis other than the conditions in subsection (b) of this section; or

(3) exceed the authority granted to it by law to regulate a cannabis establishment.”

There are additional limitations on municipal authority as discussed earlier, related to the regulation of outdoor cannabis cultivation.

To further guide local cannabis regulation, Vermont authorized the creation of Local Cannabis Control Commissions, which municipalities may establish to oversee compliance with local ordinances and state laws. Recent legislation, such as Act 166 (2024), introduced Cannabis Cultivation Districts, enabling municipalities to designate areas where outdoor cannabis cultivation is preferred. Additionally, municipalities must adhere to state setback requirements for outdoor cultivation set in Act 166.

CANNABIS ADVERTISING REGULATION IN VERMONT

The evolution of cannabis advertising laws in Vermont reflects a gradual effort to balance public health concerns with the needs of a growing legal market. Act 164 (2020), which established Vermont’s legal cannabis framework, initially imposed strict advertising restrictions to prevent cannabis products from being marketed to minors or appearing overly promotional. The act prohibited products and packaging that could appeal to children and required that products be labeled with a health warning created by the Board in consultation with the Department of Health. These initial measures aimed to ensure responsible practices as the state launched its regulated market.

Subsequent legislation refined these rules to address emerging challenges and provide clarity for businesses. Act 62 (2021) expanded upon the original restrictions by defining acceptable advertising venues and methods. It clarified that cannabis advertisements could appear only in places where at least 85% of the audience is reasonably expected to be 21 or older, such as certain print publications and adult-focused events. These legislative updates demonstrate Vermont’s commitment to fostering a responsible cannabis industry while safeguarding public health and youth protection.

CANNABIS MARKETPLACE:

The Executive Director of the Board publishes monthly updates regarding the progress of the marketplace. These reports can be found at ccb.vermont.gov/meetings. These are some of the market stats provided:

Total Active Licenses	601
Licenses by Priority Application Status	60% Standard 23% Economic Empowerment 17% Social Equity
Total Outdoor and Mixed Cultivation Licenses	243
Total Active Licensed Outdoor and Mixed Cultivation Canopy	526,000

REPORT PROCESS

Section 18 of Act 166 (2024) requires the Cannabis Control Board to prepare a comprehensive report addressing key issues related to outdoor cannabis cultivation and its regulation as well as the impact of modifying laws governing cannabis advertising. The report is to be submitted to the Vermont Senate Committees on Government Operations and Economic Development, Housing, and General Affairs, as well as the House Committees on Government Operations and Commerce and Economic Development. The directive outlines six specific areas for the Board to analyze and address.

- (1) summarize the current impact of outdoor cultivation on local municipalities;
- (2) summarize the impact of establishing various siting requirements to existing licensed outdoor cultivators;
- (3) address whether and how to authorize municipalities to establish local cultivation districts;
- (4) address whether and how outdoor cultivation of cannabis should be entitled to the rebuttable presumption that cultivation does not constitute a nuisance under 12 V.S.A. chapter 195;
- (5) recommend whether local cannabis control commissions established pursuant to 7 V.S.A. chapter 33 should be granted additional authority to regulate outdoor cannabis cultivators.
- (6) the Cannabis Control Board shall address the impact of modifying the law governing cannabis advertising.

Section 18 specifies that the Cannabis Control Board must consult with a stakeholder workgroup in developing the report. This workgroup includes representatives from the Vermont League of Cities and Towns, the Cannabis Equity Coalition, the Vermont Medical Society, the Cannabis Retailers Association of Vermont, and other interested stakeholders.

The reports original due date was December 15th; however, the committees of jurisdiction granted a one-month extension to the Board to allow for a thorough consideration of the reporting points.

INQUIRIES

In preparation for consultation with the workgroup and building this report, the Cannabis Control Board and its staff team conducted a series of inquiries over the summer of 2024 to provide a base level of information. Some of this review is incorporated throughout the report as supporting logic for the requested recommendations or to provide background for impact analysis. The following sections are an overview of those inquiries.

CULTIVATOR ROUNDTABLE

Commissioner Harris hosted a Cultivator Roundtable on August 8, 2024. The session provided a platform for discussing critical topics relevant to the cannabis industry, including outdoor siting requirements. Participants engaged in an open dialogue, sharing perspectives and highlighting challenges within Vermont's regulatory framework.

Key Takeaways:

1. **Setback Regulations:** New setback requirements for outdoor cannabis cultivation, as mandated by Act 166, were discussed. These include specific distances (e.g., 25 or 50 feet) that cultivation sites must maintain from property boundaries. Of note is the automatic nature of the setbacks in Act 166 and questions on whether all towns are aware of them and intend to enforce.
2. **Municipal Variability:** Concerns arose about inconsistent enforcement. Cultivators expressed concern that without clear definitions municipalities may measure and enforce setbacks differently depending on local interpretations. Interpretations may also change as the composition of municipal boards changes.
3. **Odor Concerns:** It was assumed by participants that odor control was as a key driver for these regulations. Some participants drew connections to odor related to hemp or other types of farming activities as not dissimilar from that of cannabis. Participants raised concerns about how complaints would be evaluated. Several cultivators questioned the premise of these regulations, arguing that cannabis cultivation is being unfairly stigmatized compared to agriculture. They urged for a balance between community concerns and the rights of businesses to operate without excessive restrictions.
4. **Regulatory Challenges:** Attendees expressed frustration over the complexity and stress of compliance, particularly for small cultivators already struggling with operational costs. Some suggested that statewide regulations might not suit the unique circumstances of individual towns.
5. **Stakeholder Input:** Participants emphasized the importance of ongoing conversations and public input to ensure that new regulations do not unfairly burden businesses. The need for resources, such as mapping tools to understand municipal adoption of siting requirements, was also discussed.

Overall, the conversation highlighted the desire of participants for equitable, evidence-based regulations that address community concerns while supporting the viability of Vermont's cannabis cultivators.

EXPLORATORY MUNICIPAL SURVEY & ROUNDTABLE

Commissioner Hulburd, with the assistance of Public Education and Outreach Manager Patrick Crowley and in collaboration with the Vermont League of Cities and Towns conducted an exploratory survey regarding the local impact of the emergent cannabis market, including outdoor cultivation. The survey was followed by a roundtable discussion.

Survey Key Takeaways:

1. **Survey Process:** The survey was emailed to approximately 2400 individual email addresses provided by the Vermont League of Cities and Towns. The email list included Village Trustee’s, Select Board Members, Development Review Board’s, Planning and Zoning Administrators, Planning Commissions, Town Clerks and City Managers. Responses were received between August 30th and October 3rd.
2. **Survey Responses:** The survey received 147 responses from 111 unique municipalities. Of the responding towns 68% have adopted zoning bylaws. The results of the survey are outlined in the table below.

Informal Municipal Survey Responses

Question	Response
Has your Municipality established a Local Control Commission	<ul style="list-style-type: none"> • No 71% • Yes 28 %
Is your municipality considering adopting a Cannabis Cultivation District as authorized by Act 166 (2024)	<ul style="list-style-type: none"> • No 48% • Maybe 27% • Yes 2% <p>21%, <i>Not Eligible</i></p>
Have municipal officials in your town received complaints from residents regarding nuisances related to outdoor cannabis cultivation, such as odor or noise?	<ul style="list-style-type: none"> • No 88% • Yes 11%*
What impact, if any, has outdoor cannabis cultivation had on town resources specifically regarding compliance with local ordinances and bylaws?	<ul style="list-style-type: none"> • No Impact 90% • Some Impact 7% • A Great Deal of Impact 2%**
The local fee for cannabis licensing is currently \$100. Does this fee cover the administrative costs for processing the local cannabis license, excluding other standard permitting costs (e.g. building permits)?	<ul style="list-style-type: none"> • Yes 53% • No 46%

*Those that responded yes noted provided examples of complaints regarding odor, noise, location, lighting, septic capacity among other general concerns.

**Those that responded “some impact” or “great deal of impact” shared both positive and negative impact. Positive impact included increased business and vitality to a small down. Negative impact included lack of clarity on land use/development and zoning regulations, as well as administrative staff time.

Roundtable Key Takeaways

Roundtable Discussion: On October 8, 2024, Commissioner Hulburd hosted a discussion, inviting the same contacts that received the survey. The goal of the discussion was to review the survey results and to gather additional insights from municipalities.

Local Authority and Zoning Challenges: Municipal representatives raised questions about the scope of their authority. The perception of ambiguity in Act 166 regarding cultivation districts was of concern, with participants seeking clarity on whether these districts could restrict cultivation in certain areas or merely designate preferred zones. Some participants wondered whether a town could define cannabis cultivation as an acceptable use instead of establishing a specific district. Others raised concerns about whether setback requirements would apply to existing operations. Additionally, towns sought clarification on the purpose and function of local control, wondering if Local Cannabis Commissions are intended to operate similarly to Local Liquor Commissions. For many of these questions there is no clear answer. Some participants highlighted the need for clear and consistent enforcement standards, while others stressed the importance of aligning cultivation regulations with broader zoning frameworks.

Outdoor Cultivation and Nuisances: Odor from cannabis cultivation in residential areas was discussed, with participants acknowledging the challenges of controlling it and comparing it to traditional farming. Some towns shared instances of residential conflicts from backyard cannabis operations and requested guidance on managing setbacks and nuisance complaints. Those towns discussed concerns related to cultivation in areas that are or may become more densely developed with housing or commercial projects.

Advertising and Signage: There was a consensus that advertising rules for cannabis should align with existing local signage regulations. However, towns expressed concerns about enforcement mechanisms, especially in sensitive areas near schools or daycares.

PRELIMINARY IMPACT ANALYSIS - SITING

Chair Pepper, along with the Board's Data Manager and in partnership with the Vermont Center for Geographic Information (VCGI), conducted an analysis to assess the impact of setback requirements outlined in Act 166 on current outdoor cannabis cultivation licensees. The analysis aimed to determine how the 10-foot, 25-foot, and 50-foot setbacks from property boundaries or highways would affect the operations of existing cultivators.

To perform the analysis, the CCB and VCGI mapped the property boundaries of all outdoor cultivation licensees, overlaying each with the specified setback distances. It is important to note that the analysis has limitations. The CCB does not yet know which municipalities will adopt

cannabis cultivation districts or could adopt zoning regulations in the future, nor which setback distances municipalities will enforce. As a result, the analysis used the 50-foot (the red line in the photo example below) setback as a default marker to estimate whether cultivators would have sufficient space to continue operations.

Mapping Example:



The property line is shown in yellow. The 10-foot setback in purple, the 25-foot setback in blue and the 50-foot setback in red.

This analysis has some limitations in that “impact” was determined by a cultivation plot existing within a setback buffer with insufficient space on the parcel to relocate it. If a parcel did have sufficient space to move a cultivation site out of a setback buffer, the Board did not further consider the viability of the relocation site which can be limited by issues related to soil health, topography, light access, wetlands, land trusts, wildlife habitat, etc. Further the Board is uncertain how the setbacks will be measured and if they are intended to include only the area in which cannabis is cultivated or if it is also meant to include buildings in which cannabis is stored and dried.

The analysis identified **11 businesses that could face significant impacts due to statutory setbacks** using the 50ft setback buffer, potentially forcing them to relocate or shut down. For the remaining 232 licenses, the impact remains unclear due to the caveats mentioned above.

Of the businesses that could face significant impacts, **2 are Social Equity Applicants, 4 are Economic Empowerment Applicants, and 5 are Standard Applicants.** The total cultivation that could face significant impacts is estimated to be **14,000 square feet of licensed canopy.**

WORKGROUP CONSULTATION

The workgroup convened to contribute to this report included representatives from key organizations, such as the Vermont League of Cities and Towns, the Cannabis Equity Coalition, the Vermont Medical Society, and the Cannabis Retailers Association of Vermont. Over the course of four public meetings held between October 31 and December 17, 2024.

In addition to contributions from the core members, the workgroup benefited from valuable insights provided by external experts. Matt Boulanger, Planning Director for the Town of

Williston and Ben Varardi, an Associate Professor at Vermont Law and Graduate School, shared their expertise on topics ranging from municipal planning considerations to the legal nuances of cannabis regulation. Below are links to the recordings these meetings:

Meeting 1	October 31, 2024	Video
Meeting 1a (Advertising Discussion)	November 20, 2024	Video
Meeting 2	December 12, 2024	Video
Meeting 3	December 17, 2024	Video

Between January 2 and January 6th Commissioner Hulburd held follow-up meetings with each stakeholder group to get final thoughts before producing the final report.

ACT 166, SECTION 18 REQUIREMENTS

SUMMARIZE THE CURRENT IMPACT OF OUTDOOR CULTIVATION ON LOCAL MUNICIPALITIES;

Considering feedback from the municipal survey and roundtable conducted by the Board, testimony from municipal officials, and consultations with the League of Cities and Towns, the impact of outdoor cultivation on local municipalities appears to be minimal in many towns but where there is impact it can create unique challenges. This variance can be attributed to discrepancies in geographies, resources, and other variables in each unique municipality. As a result, it is not feasible to provide a single summary of impact that would be universally applicable or agreeable across all municipalities.

There is a consensus that certain aspects of Act 166 (2024) need further clarification to ensure consistent and effective regulation. One critical area is the measurement of setbacks, where standardized guidelines are essential to avoid confusion and disputes. Additionally, clear procedures for resolving conflicts are necessary to streamline processes and reduce potential friction between municipalities and cultivators.

Stakeholders emphasize the need for explicit guidance on how setback requirements will be applied and enforced to maintain fairness and consistency. Equally important is the question of how current setback provisions will affect existing licensees. Providing clarity on whether and how these requirements apply to businesses already in operation is crucial to avoid unnecessary disruptions and build trust in the regulatory system.

By addressing these issues, the regulatory framework can better support municipalities, cultivators, and the CCB in navigating setbacks with transparency and consistency, fostering a more stable and equitable cannabis industry in Vermont.

Further, as mentioned previously, clarity on how setbacks would be measured and to what part of the business or cultivation operation is needed should these setbacks remain in statute. While a business may place its actual cultivation area on a property in accordance with the setback requirements, they may also use existing barns or other buildings for drying, storing or housing mother plants and seeds. It's unclear if the required setbacks will apply to the actual cultivation area or to all stages of production. As it relates to setbacks and cultivation plots, clarity is needed on how the setback will be measured and at whose expense. To this end, the Board recommends that setbacks apply only to the cultivation plot and that the measurement be from the property line to the nearest point at which the nearest plant enters the ground or planting pot.

SUMMARIZE THE IMPACT OF ESTABLISHING VARIOUS SITING REQUIREMENTS TO EXISTING
LICENSED OUTDOOR CULTIVATORS;

The impact of siting requirements on cannabis cultivators in Vermont varies significantly depending on the applicable setbacks and whether municipalities choose to establish cultivation districts, adopt the maximum standards set by Act 166, or create alternative regulations.

The Cannabis Control Board (CCB) estimates that 11 businesses, collectively licensed to cultivate approximately 14,000 square feet of canopy, will face significant challenges if current setback requirements are applied to their existing operations. However, the full impact on the remaining outdoor and mixed cultivation licenses remains unclear due to limitations in the mapping analysis.

Workgroup stakeholders appeared to agree that setbacks should be measured from the property line to the stalk of the plant, focusing exclusively on the cultivation area. This approach, which excludes areas used for equipment storage or processing buildings, would provide a clear and straightforward method for defining and measuring setbacks.

Further, the Board is unclear to what extent the CCB should be involved in setback enforcement at initial licensing or renewal. There is currently no mechanism for the CCB to be notified when a Cultivation District is created, or a setback standard is adjusted. Where a municipality has developed an LCC the Board will communicate with the LCC before licensing at the state level. However, most towns have not formed an LCC, leaving open the possibility that licenses will be issued by the CCB without local verification of setback compliance.

The impact extends beyond individual businesses to the broader supply chain and market. Outdoor and mixed outdoor cultivation account for 56% of Vermont's licensed cannabis canopy, making them critical to the state's market stability. Further, a small number of outdoor and mixed cultivation license holders also hold other license types such as manufacturing and retail. For businesses with multiple license types, it remains unclear whether setbacks impacting outdoor licenses will also affect their other aspects of their business, potentially compounding the challenges they face.

Disruptions caused by siting requirements could reduce supply, drive up wholesale and retail prices, and push consumers back to the illicit market. Further, additional regulatory burdens on cannabis cultivators—stricter than those on hemp producers, who are regulated by the USDA—could incentivize cultivators to switch to hemp, exacerbating supply challenges and outdoor odor concerns. Stakeholders in the workgroup emphasized the importance of clear, consistent guidelines for setback measurement, dispute resolution, and compliance standards. They also advocated for mediation programs, like that of the Vermont Agricultural Mediation Program, to resolve conflicts cost-effectively and equitably.

Compounding these challenges are significant limitations on available land for cannabis cultivation. Properties under conservation programs, federally funded initiatives, or with federally backed mortgages are often ineligible for cannabis cultivation. These restrictions disproportionately affect small-scale and social equity cultivators, who already face barriers such as limited access to capital. The Board is concerned that overly restrictive siting requirements could lead to business closures, financial strain, and instability in Vermont's

regulated cannabis market, undermining its growth and equity goals. To address these issues, the Board suggests exploring land access support for small and social equity cultivators, clarifying whether existing businesses are subject to new setback provisions to prevent abrupt disruptions to operations. These measures are essential to fostering a stable, fair, and effective marketplace.

ADDRESS WHETHER AND HOW TO AUTHORIZE MUNICIPALITIES TO ESTABLISH LOCAL
CULTIVATION DISTRICTS;

After extensive discussions during workgroup meetings and roundtables, the Board recommends reevaluating the utility of cultivation districts as established in Act 166.

Currently, the Board is only aware of one municipality that has begun the process of adopting a cultivation district. A survey conducted by the Board over the summer revealed that most municipalities are hesitant or unlikely to pursue this option: 48% of respondents stated they are not considering adopting a cultivation district, 21% indicated they do not have zoning, and 27% were undecided. These findings suggest that cultivation districts may not be widely adopted or practical for many towns.

Additionally, cultivation districts could present logistical and operational challenges for cultivators. For example, clustering multiple cultivation sites within a single district could increase the risk of issues such as contaminant drift, where plant health problems in one operation might spread to nearby cultivators. In some states, regulations specifically prevent cultivation sites from bordering one another to avoid these risks, and while Vermont does not need to adopt similar rules, it should remain mindful of these potential complications.

Finally, the establishment of cultivation districts could inadvertently undermine the Legislature's goals as outlined in 7 V.S.A. § 843(a) and 7 V.S.A. § 904a(a). Given the limited availability of land suitable for cannabis cultivation, restricting land access further through cultivation districts could inflate property costs, creating additional barriers for small-scale operators and social equity applicants. Many of these individuals already face significant financial and regulatory challenges, and such measures could limit their ability to transition from the illicit market to the regulated industry. For these reasons, the Board recommends reconsidering the cultivation district model and exploring alternative approaches that better balance local control with equitable market access.

ADDRESS WHETHER AND HOW OUTDOOR CULTIVATION OF CANNABIS SHOULD BE ENTITLED TO
THE REBUTTABLE PRESUMPTION THAT CULTIVATION DOES NOT CONSTITUTE A NUISANCE
UNDER 12 V.S.A. CHAPTER 195;

The Cannabis Control Board (CCB) recommends that outdoor cannabis cultivation continue to be entitled to the rebuttable presumption that cultivation does not constitute a nuisance in the same manner as farming.

This recommendation is based on several factors, the environmental benefits of outdoor cultivation, and the equitable treatment of cannabis relative to hemp.

The Board reviewed two references that outline the source and similarities of aroma for hemp and cannabis. The first of these reports compares cultivation and agriculture and community odors. The second explores the inability for trained canines to identify the difference between hemp and cannabis.

- [Cannabis Cultivation Facilities: A Review of Their Air Quality Impacts from the Occupational to Community Scale | Environmental Science & Technology](#)
- [The Effect of Legal Hemp on Drug Dog Sniffs \(Part I\) – North Carolina Criminal Law](#)

From an environmental perspective, outdoor cannabis cultivation is significantly more sustainable than indoor cultivation, which is highly energy intensive. Testimony from the Vermont Department of Public Service in July of 2021 highlighted the stark differences in environmental impacts, with indoor operations consuming up to 300% more energy than greenhouse tomato production and contributing to substantial energy demands nationally. Outdoor cultivation aligns more closely with Vermont’s energy conservation goals, further supporting its inclusion under the rebuttable presumption. Additionally, it is the Board’s understanding that, hemp cultivation—regulated federally and sharing similar terpene-related odors with cannabis—is entitled to the rebuttable presumption. Treating cannabis differently, despite comparable environmental and olfactory impacts, could undermine fairness and market equity.

Considering these factors, and with the prospect of federal rescheduling, interstate commerce, and evolving market dynamics, it is crucial to maintain consistent and equitable regulations that support small operators while addressing legitimate community concerns. Therefore, the CCB affirms that outdoor cannabis cultivation should continue to benefit from the rebuttable presumption under 12 V.S.A. chapter 195.

RECOMMEND WHETHER LOCAL CANNABIS CONTROL COMMISSIONS ESTABLISHED PURSUANT TO 7 V.S.A. CHAPTER 33 SHOULD BE GRANTED ADDITIONAL AUTHORITY TO REGULATE OUTDOOR CANNABIS CULTIVATORS.

At the time of the survey, most municipalities had not formed Local Cannabis Control Commissions (LCCs), citing a lack of clarity regarding their role and authority. While the Cannabis Control Board (CCB) communicates with LCCs when they exist, the intended relationship and division of responsibilities between the CCB and LCCs remain undefined. Additionally, municipalities expressed concerns that the work of an LCC might duplicate the efforts of other municipal bodies, such as Development Review Boards or Planning Commissions, which already address site planning, permitting, and buildouts for cannabis establishments. This ambiguity has left many municipalities questioning the benefits of forming an LCC.

To address these concerns, clearer definitions of LCC authority and responsibilities are necessary. One of the current benefits of forming an LCC is that the CCB cannot issue a

cannabis license without prior approval from the LCC. This requirement fosters communication between the CCB and municipalities and serves as a mechanism to ensure that local permits are in place before state licensure. While this is a valuable function, many municipalities seek a broader understanding of how LCCs can add value beyond their current scope.

The CCB supports expanding the authority of LCCs in specific contexts, particularly for potential future license types. For instance, if the Legislature approves consumption lounges or cannabis-related events, LCCs could play a critical role in regulating the time, place, and manner of these operations. Similarly, LCCs could have oversight of activities at licensed locations that impact traffic flow or other local infrastructure considerations. These additions would allow municipalities to address local concerns more effectively while maintaining alignment with state regulations.

Further clarity is also needed regarding the interaction between state laws and local ordinances under 7 V.S.A. § 863. Municipalities have highlighted confusion around the regulatory framework for outdoor cannabis cultivation, which seems to fall between the established standards for farming and development. Subsection (b) allows municipalities to establish LCCs to issue and enforce local control licenses, but subsection (d)(1) prohibits municipalities from effectively banning cannabis establishments through ordinances or bylaws. This creates uncertainty about which local ordinances can be enforced. For example, if a cannabis establishment is required by CCB regulations to install fencing, but local ordinances prohibit fencing in that area, municipalities are unclear whether such ordinances violate § 863(d)(1).

To resolve these challenges, municipalities need clear guidance on the scope of their authority and how to navigate conflicts between local ordinances and state requirements. By providing clearer regulations and expanding the potential roles of LCCs in specific contexts, the Legislature and CCB can help ensure a balanced and effective framework for cannabis regulation that supports both local and state interests.

THE CANNABIS CONTROL BOARD SHALL ADDRESS THE IMPACT OF MODIFYING THE LAW
GOVERNING CANNABIS ADVERTISING.

Cannabis laws, including those governing advertising, vary significantly from state to state. While cannabis products are prohibited from crossing state lines, advertising presents a unique challenge. The Vermont Cannabis Control Board (CCB) has jurisdiction only over licensed cannabis establishments operating within Vermont. As a result, the CCB cannot enforce Vermont's advertising restrictions—such as those addressing audience composition, health warnings, or content requirements—on companies licensed in other states that advertise within Vermont.

This regulatory gap creates challenges for Vermont's cannabis market. Vermont-based businesses must comply with state advertising regulations, while competitors from neighboring states, advertising to the same regional audiences, do not. This disparity particularly affects retailers near state borders, who are unable to market as broadly as out-of-state operators located just a few miles away. Additionally, multi-state brands that are not produced in Vermont but aim to establish national recognition in anticipation of federal legalization can advertise in

Vermont, and sell branded merchandise in Vermont to any audience, regardless of age, potentially undermining the market share of Vermont's small producers and the public health and youth prevention considerations built-in to Vermont's regulations.

Vermont's advertising laws require pre-approval of all advertisements by the CCB, similar to regulations for spirits and malt beverages (DLL, n.d). The Board tracks submissions for approval, including denials and their reasons, as well as complaints related to advertising. According to the Executive Director's October 30th report, the CCB received 29 advertising submissions in the previous month, of which nine were denied, primarily for missing or illegible health warnings. Of the 34 complaints received by the Board during the same period, five were related to advertising.

Stakeholders from Vermont's cannabis industry and public health advocacy groups have expressed divergent views on the state's advertising laws. Industry representatives advocate for easing restrictions and eliminating the pre-approval process, arguing that the current framework hinders competitiveness and innovation. Meanwhile, prevention and public health advocates emphasize the potential risks of relaxing these regulations, particularly the impact on youth exposure to cannabis marketing.

Studies provided by health advocates underscore the potential public health risks associated with loosening advertising restrictions. The Board reviewed the following provided by public health advocates:

- [Alcohol marketing and youth alcohol consumption: a systematic review of longitudinal studies published since 2008 - Jernigan - 2017 - Addiction - Wiley Online Library](#)
- [Campaign for Tobacco Free Kids](#)
- [Association of e-Cigarette Advertising, Parental Influence, and Peer Influence With US Adolescent e-Cigarette Use | Public Health | JAMA Network Open | JAMA Network](#)
- <https://jamanetwork.com/journals/jamapediatrics/fullarticle/205900>

Further a proposal to change the advertising laws, submitted by a member of the workgroup, is attached in the appendix.

From the perspective of the CCB, amending the substance of the advertising laws, if amendments are clear and objective, is not likely to impact the CCB's workflows and staffing needs. However, modifying processes, like-eliminating pre-approval, could impose new burdens on the CCB's resources.

Changing Vermont's cannabis advertising laws could have significant implications for the state's market. While easing restrictions might level the playing field for Vermont operators and enhance competitiveness, particularly near state borders, it could also increase risks to public health and youth exposure. Any changes to these laws will require careful consideration to balance the interests of industry growth with the state's commitment to public health and equity.

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APPENDIX –

Advertising Proposal submitted by Sam Bellavance, Sunset Lake Cannabis

Memo

To: Cannabis Control Board
Re: Cannabis Advertising Recommendations
Date: December 9, 2024

Chair Pepper,

On behalf of our client, Sam Bellavance, Sunset Lake Cannabis, we submit the following proposed amendments to 7 V.S.A. These changes are designed to enhance the competitiveness of Vermont's cannabis licensees, enabling them to better compete with neighboring states that have implemented adult-use cannabis programs. We believe these reforms will foster a more sustainable and thriving cannabis industry in Vermont, benefiting both businesses and consumers. We appreciate your time and consideration.

7 V.S.A. § 861

§ 861. Definitions

As used in this chapter:

- (1) "Advertise" means the publication or dissemination of an advertisement.
- (2) "Advertisement" means any written or verbal statement, illustration, or depiction that would reasonably have the effect of inducing sales of cannabis or cannabis products, including any written, printed, graphic, or other material; billboard, sign, or other outdoor display; other periodical literature, publication, or in a radio or television broadcast; the Internet; or in any other media. The term does not include:
 - (A) any label affixed to any cannabis or cannabis product or any individual covering, carton, or other wrapper of that container that constitutes a part of the labeling under provisions of these standards;
 - (B) any editorial or other reading material, such as a news release, in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any cannabis establishment, and that is not written by or at the direction of the licensee;
 - (C) any educational, instructional, or otherwise noncommercial material that is not intended to induce sales and that does not propose an economic transaction, but that merely provides information to the public in an unbiased manner; or
 - (D) a sign attached to the premises of a cannabis establishment that merely identifies the location of the cannabis establishment;
 - (E) signage or written material located within a licensed cannabis establishment, so long as that material is not appealing to persons under 21; or
 - (F) text or email messages only to age-verified customers who have expressly consented to receive promotional messaging from a licensed retail establishment.

7 V.S.A. § 864

§ 864. Advertising

- (a) “Advertise” and “advertisement” have the same meaning as in section 861 of this title.
- (b) A cannabis establishment advertisement shall not contain any statement or illustration that:
- (1) is deceptive, false, or misleading;
 - (2) promotes overconsumption;
 - (3) represents that the use of cannabis has curative effects;
 - (4) [Repealed.]
 - (5) ~~offers free samples of cannabis or cannabis products [Repeal]~~
 - (6) depicts a person under 21 years of age consuming cannabis or cannabis products; or
 - (7) is designed to be or has the effect of being particularly appealing to persons under 21 years of age.
- (c) Cannabis establishments shall not advertise their products via any medium unless the licensee can show that not more than 15 percent of the audience is reasonably expected to be under 21 year of age. Notwithstanding this subsection, cannabis establishments may advertise anywhere that alcohol is sold or served.
- (d) All advertisements shall contain health warnings adopted by rule by the Board in consultation with the Department of Health.
- (e) All advertisements shall be submitted to the Board on a form or in a format prescribed by the Board, prior to the dissemination of the advertisement. The Board may:
- (1) require a specific disclosure be made in the advertisement in a clear and conspicuous manner if the Board determines that the advertisement would be false or misleading without such a disclosure; or
 - (2) require changes that are necessary to protect the public health, safety, and welfare or consistent with dispensing information for the product under review.