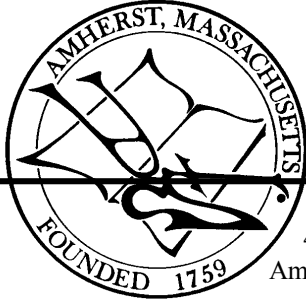


Town of



# AMHERST *Massachusetts*

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Senator Patricia D. Jehlen  
24 Beacon St.  
Room 424  
Boston, MA, 02133

May 9, 2017

Representative Mark J. Cusack  
24 Beacon St.  
Room 544  
Boston, MA, 02133

Senator Jehlen and Representative Cusack,

Following Amherst's testimony at the March 27<sup>th</sup> Joint Committee on Marijuana Policy hearing, Senator Jehlen asked why a 2% local option tax would not be sufficient to cover the Town's anticipated needs. At the time, I did not have data to support this position and promised to follow up with additional information. This letter serves to answer that question, to the best of my ability, as well as reinforce several other issues we raised in our testimony.

The size of the recreational marijuana market in Amherst is unknown. Therefore we can't determine, with any certainty, whether a 2% local option tax is sufficient to cover our anticipated expenses. We also don't have a complete understanding of what the impact will be, and so can only provide estimates as to additional costs. It is primarily for these reasons that we couched our request in terms of flexibility to set an appropriate local income tax that will ensure that municipalities can raise enough revenue to cover their costs.

Regardless, I have tried to estimate what the market will be in Amherst. The process of refining these figures is ongoing, but a per capita analysis of the statewide recreational marijuana markets in Colorado, Oregon, and Washington in 2016, reveals that the market in Amherst is likely to be between \$2.5 million and \$5.8 million. Adoption of the full 2% local option tax would result in approximately \$50,000-\$115,000 in local tax revenue. A more granular analysis of just the counties with flagship university campuses – Boulder County, CO, and King County, WA (no data available for Lane County, OR) – results in a somewhat larger market. Based on a per capita analysis of these regions, the Amherst market would be between \$3.9 million and \$8.2 million.

with the Town netting approximately \$78,000-\$163,000 in revenue. As context for that number, the cost to the Town of hiring a police officer or an emergency medical responder, who are Amherst employees and not contracted out to a private firm, is between \$91,000 and \$94,000, including benefits.

Amherst staff has already spent hundreds of hours trying to understand the recreational marijuana law and how it will affect our community. This includes the time of the Town Manager, Police Chief, Fire Chief, Planning Director, Director of Public Health, and Building Commissioner, as well as committees, including the Select Board and the Planning Board's Zoning Subcommittee. We expect that this "hidden cost" will continue to grow as the legislature makes changes to the law, when we see the state regulations, and as we amend our zoning bylaw to allow recreational marijuana establishments.

Amherst also faces the challenge of having to constantly educate our young population about the law and appropriate marijuana use. 65% of Amherst residents are below the age of 25 and over 30% are under the age of 20. We anticipate needing to educate a large number of new residents on an annual basis due to the fact that each year close to 5,000 new residents join our community as freshman at UMass, Amherst College, and Hampshire College.

This issue is underscored by the fact that is that the price of marijuana in Colorado dropped by 25% in the first two years since recreational use was legalized. That would mean that annual revenues would decrease by a similar amount. Even if the initial revenues were sufficient to cover the costs to the Town, because of our constantly changing population and the need to provide continuous education to our new residents, Amherst would likely find that very soon tax revenue would fall short of expenditures.

Given the uncertainties regarding the size of the recreational marijuana market and actual municipal costs of implementing, enforcing, and educating people about the law, providing communities with more flexibility to set an appropriate local option tax rate is critically important. It will allow communities to adjust the local option tax, if necessary, to ensure sufficient resources to meet actual costs.

I also wanted to address several other concerns with recreational marijuana law. The first is the timing for implementation of the law. I've attached a letter dated April 17, 2017, from the Amherst Select Board to Senate President Stan Rosenberg detailing our issues and offering several potential solutions that would provide sufficient time for municipalities to consider the final regulations prior to adopting recreational marijuana-related bylaws.

The second concern is that recreational marijuana does not receive the same level of local control as similar products, such as the sale alcohol and tobacco. In both of these cases, municipalities have the ability to determine, through the local licensing authority or the local Board of Health, respectively, whether a particular location would be suitable for the type of establishment sought. Amherst also has detailed regulations with respect to the sale and use of tobacco products that address a number of issues and similar local regulations ought to be applicable to recreational marijuana. These include the local application process for a Tobacco Product Sales Permit,

prohibition of flavored tobacco sales, vending machines, and sales at health care institutions, requirements for landlords to document smoking-related policies for residents, and prohibitions on smoking in the workplace and in public spaces.

As currently written, the only local control that municipalities have is to adopt ordinances or by-laws that are not “unreasonably impracticable” which the CCC will take into consideration when evaluating license applications. Unlike licensing for alcohol and tobacco, which allows municipalities to consider other factors such as traffic, proximity to similar establishments, use of zoning as the only local control over the location of recreational marijuana establishments is a blunt instrument that severely curtails municipalities’ ability to appropriately locate these businesses. Imagine if the Alcoholic Beverages Control Commission approved all package store license applications based solely on whether the use was allowed by zoning and then ask yourself why it should work that way for recreational marijuana. Amherst would like to avoid a situation like Denver’s “Green Mile” which has 11 medical and recreational marijuana establishments along a 1.25 mile stretch of road.

The third concern is the lack of clarity in the law. Examples of the law’s ambiguity include:

- Section 1(d) defines a “experienced marijuana establishment operator” to include “a reorganized marijuana business established by a vote of at least 2/3 of the board of directors of an entity that submitted an application for registration to operate a medical marijuana treatment center to the department of public health before October 1, 2015 and was issued a provisional registration to operate a medical marijuana treatment center by the department of public health before the effective date of this chapter.” Why would an establishment that has not actually opened or sold any product be considered “experienced” and granted preferential treatment when applying for a recreational marijuana license?
- Section 3(a)(1) states that “zoning ordinances or bylaws shall not prohibit placing a marijuana establishment which cultivates, manufactures or sells marijuana or marijuana products in any area in which a medical marijuana treatment center is registered to engage in the same type of activity.” How is “area” defined? What is meant as registered? Provisional certificate of registration? Final certificate of registration? If a municipality passes a temporary moratorium, does this language preempt the moratorium in those specific “areas”?
- Section 3(a)(2)(ii) states that a “vote of the voters” is required if a municipality wishes to “limits the number of marijuana retailers to fewer than 20 per cent of the number of licenses issued within the city or town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under chapter 138 of the General Laws.” Does this include both “all alcohol off premises” and “wine & malt off premises” licenses?
- Section 3(b) describes the procedure for voting on whether to allow on-site consumption of marijuana, but it is unclear whether a vote is required to opt-in, or to opt-out. It should clearly state that on-site consumption is prohibited unless and until a municipality has affirmatively voted to allow that use and adopted appropriate ordinances and/or bylaws.

These ambiguities must be clarified in order for municipalities to be able to understand the law and draft appropriate ordinances and bylaws.

Thank you for taking the time to understand our concerns. Amherst is committed to implementing the recreational marijuana law in a safe and responsible manner. I hope that you agree that making these changes will result in a better, clearer, and more manageable law that is still consistent with the will of the voters.

Sincerely,

Geoff Kravitz  
Amherst Economic Development Director

Enclosure: 4/17/17 letter from the Amherst Select Board to Senate President Rosenberg