

EVANSCUTLER ATTORNEYS
NORTHAMPTON

OPTIONS FOR MUNICIPALITIES

February 1, 2018

This memorandum responds to inquiries from municipalities concerning local responses to the new marijuana legalization law as enacted by the voters in November, 2016, and modified by the legislature in December 2016 and in 2017. The final changes, formally known as Chapter 55 of the Acts of 2017, were signed into law by the governor on July 28, 2017. This memo offers a sample zoning bylaw; a sample “community host agreement;” a sample resolution for accepting a municipal option sales tax; and, frequently asked questions (FAQ)

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I. Zoning Options for Municipalities

A. Context & Options

In November, 2016, the voters of Massachusetts legalized commercial marijuana for all adults, dramatically expanding access beyond the medical marijuana program begun in 2013. A new state agency, the Cannabis Control Commission (CCC), has been created to regulate cannabis commerce. The CCC will issue final regulations in March, and begin accepting applications for licenses as soon as April 1. Under the statute as enacted by the voters and amended by the legislature in 2017, license applicants must comply with local law “in effect at the time of application.”¹ Thus, cities and towns should not delay considering whether changes are needed to their existing zoning laws to best protect the public health and safety, and preserve the character of the community. A range of options is available.

Before identifying the options, two features of regulation are noteworthy.

Regulation of the industry and its participants--from producers to distributors--in all types of marijuana operations, primarily will be done by the Cannabis Control Commission, *i.e.*, making the rules for security, potency, purity testing, vetting of applicants, licensing, diversion prevention and all issues for protection of public health and protection of minors. And, the CCC bears the full burden of enforcing those rules.

A second aspect of regulation requires that before any marijuana establishment can be licensed, the applicant must reach a "Community Host Agreement" with the municipality where it intends to locate, "setting forth the conditions to have a marijuana establishment ... located within the host community which shall include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment."²

The authority of municipalities to impose and enforce controls over marijuana operations derives from Section 3(a) of G.L. Chapter 94G:

A city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with

¹ GL, Chapter 94G, Section 5(a)(2)

² GL Chapter 94G, Section 3(d). The agreement presumably would be signed by the town manager at the direction of the city council.

regulations made pursuant to this chapter and that ... govern the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories[.]³

The statute further limits the municipality's rights to so "govern," by including curbs on the conversion of medical operations to non-medical operations, and on the number of operations allowable.

Within the authority granted by the statute, the range of options available to municipalities may be roughly identified as follows.

- Option 1: Do nothing. A municipality may, but is not required to enact local laws governing the time, place and manner of marijuana establishment operations. It may rely on existing special permit and site plan approval processes to impose necessary "safeguards" and the host agreement to fill in any local regulatory gaps beyond the scope of state regulations and special permit terms.⁴
- Option 2. Acknowledge and apply. ("Montague Model") A town can amend existing zoning to acknowledge the prospect of new marijuana businesses in town, prescribing where they may operate, using the existing special permit/site plan approval controls to provide the town with necessary protections in the form of conditions, and to keep the public informed and engaged through notices and public hearings.
- Option 3. Impose new regulations. Add a new regulatory section to the zoning bylaw for non-medical marijuana operations, replicating state requirements and imposing new ones on matters concerning security, signage, parking, hours of operation, etc., on top of existing special permit/site plan approval processes and the state regulations.
- Option 4. Stall. Pass a moratorium delaying consideration of licensed marijuana operations until next year. Until then, monitor developments in other cities and towns.
- Option 5. Total ban. Enact a bylaw prohibiting all licensed marijuana operations (and forgo new revenue available under state law and the host agreement process). If a town said "yes" to legalization in the 2016 election, any such bylaw would have to be submitted to the voters for approval at a regular or special election.⁵

The new law merges the regulation of medical marijuana and non-medical marijuana. By the end of 2018, the Department of Public Health will have no role in the supervision of Registered

³ GL, Chapter 94G, Section 3(a).

⁴ This option was specifically acknowledged by the CCC on p. 8 in its "Guidance to Municipalities" dated January 2018 : "Alternatively, a municipality may determine a proposed marijuana-related use falls under an existing use authorized by its bylaws or ordinances."

⁵ GL Chapter 94G, Section 3(e)(3)

Medical Marijuana Dispensaries. Existing (non-profit) RMDs are expected to convert to for-profit status, and open their doors to all adults at their earliest opportunity. As most if not all medical marijuana dispensaries will be converting to offer products to all adults, with town banned from blocking such converted uses, there is no need to maintain a legal distinction in local zoning between medical and non-medical marijuana.

The following draft bylaw is a variant of Option 2, as it goes beyond Option 2 by repealing the existing medical marijuana rules, and inserting new lines on the Table of Use Regulations to cover all licensed marijuana commerce, whether medical or not, and regardless of the class of license held.

The draft bylaw is organized as follows:

Part I removes references to medical marijuana.

Part II inserts provisions acknowledging the anticipated uses of land and buildings for commercial marijuana, and prescribing appropriate districts.

Part III inserts miscellaneous provisions.

Finally, a word about nomenclature. This amendment avoids the term “recreational marijuana” for two reasons. One is that it is a colloquial, not a legal, term, not appearing in G.L. Chapter 94G nor in the (draft) regulations promulgated by the CCC. The other reason is that it is not fitting: people consume marijuana for reasons other than medicine and recreation.

B. Specimen Zoning Ordinance

Summary

These amendments remove references to medical marijuana from the current bylaw entirely and replace them with rules covering both medical or non-medical establishments (“Licensed Marijuana Operations”), subjecting those uses to existing special permit/site plan approval procedures for municipal scrutiny and conditioning. They apply to all uses of land by CCC-licensed marijuana establishments, regardless of the class of license held by the establishment.

Preamble

Whereas, in 2016 the people of Massachusetts voted to transform the nature of the marijuana industry from an underground, illicit network of producers, distributors and consumers to a regulated, taxed market; and

Whereas, it was supported by 56% of Appleton voters; and

Whereas, legal commerce in marijuana will be conducted by marijuana establishments licensed and regulated by the Cannabis Control Commission to cultivate, sell at retail and manufacture products; and

Whereas, Chapter 94G, Section 3, authorizes cities and towns to “adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter,” and that “govern the time, place and manner of marijuana establishment operations;” and

Whereas, Appleton intends hereby to impose such reasonable safeguards governing the time, place and manner of marijuana establishments as shall serve the public health, safety, well-being of Appleton residents and visitors; and

Whereas, the Planning Board determined, after reviewing all available data, soliciting wide input and reaching out to other communities experienced with marijuana establishments, that licensed marijuana establishments, operating in accordance with reasonable regulations, pose no unique threat to the health, safety, well-being or character of the community by reason of the nature of marijuana; and

Whereas, the legalization of marijuana commerce provides Appleton with a significant opportunity to expand its tax base, utilize now-vacant industrial space, provide employment opportunities and exact new revenue through retail sales taxes and community host agreements with marijuana establishments;

Now, therefore, the Appleton zoning bylaws are hereby amended as follows:

Amendments

I. Removal of medical marijuana provisions

Chapter 171 of the Zoning Ordinance of the Town of Appleton is hereby amended by removing Article XXIV, Medical Marijuana Facilities and Operations.

II. Insertion of marijuana provisions

2. Insertion of marijuana provisions

A. To Section 2.1, “Term Definitions,” the following new definitions are added:

CCC: the Massachusetts Cannabis Control Commission

Greenhouse Marijuana Cultivation: The cultivation of marijuana in a greenhouse.

Independent Testing Laboratory operations: Use of land or buildings by an Independent Testing Laboratory licensed by the CCC

Indoor Marijuana Cultivation: The cultivation of marijuana in an enclosed structure, excluding greenhouses.

Licensed Marijuana Operations: The conduct of business by the holder of a marijuana establishment license from the CCC, and the exercise of all rights associated therewith, and subject to the duties and responsibilities imposed by state law, state regulation and local conditions of operation.

Marijuana Cultivation: Use of land and/or buildings for planting, tending, improving, harvesting, processing and packaging, the preparation and maintenance of soil and other media and other measures for promoting the growth of marijuana by a Marijuana Cultivator, Micro-Business, Research Facility, Craft Marijuana Cultivator Cooperative, Registered Marijuana Dispensary or other entity licensed by the CCC for marijuana cultivation.

Marijuana Product Manufacture: Use of land and/or buildings to compound, blend, extract, infuse, or otherwise make or prepare marijuana-infused products by a Marijuana Product Manufacturer, Micro-Business, Craft Marijuana Cultivator Cooperative or other

entity licensed by the CCC for marijuana product manufacture.

Marijuana Research Facility operations: The conduct of marijuana research in accordance with a Marijuana Research license issued by the CCC.⁶

Marijuana Retailer: The holder of a Marijuana Retailer license from the CCC.⁷

Marijuana Retail Sales: Use of land and/or buildings to obtain, deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers, by a CCC-licensed Marijuana Retailer.

Marijuana Retail Sales/Storefront: The conduct of a Marijuana Retailer providing a retail location accessible to the public⁸

Marijuana Retail Sales/Delivery Only: The conduct of Marijuana Retailer that does not provide a retail location accessible to the public.⁹ “Conduct” shall mean operations associated with establishing and maintaining a base of operations for said delivery service and shall not apply to the locations of pickup, delivery and routes traveled.

Marijuana Retail Sales/Social Consumption. The conduct of a Marijuana Retailer licensed by the CCC to purchase marijuana from licensed marijuana establishments and sell single servings of marijuana to consumer for consumption on the premises¹⁰

Marijuana Retail Sales/Social Consumption/Mixed Use: The conduct of a Marijuana Retailer licensed by the CCC as a mixed use marijuana social consumption license¹¹

Marijuana Retail Sales/Social Consumption/Primary Use: The conduct of a Marijuana Retailer licensed by the CCC as a primary use marijuana social consumption license¹²

Marijuana Transporter (3d party) operations: Use of land or buildings as a base of operations for a CCC-licensed Marijuana Transporter

Outdoor Marijuana Cultivation: The cultivation of marijuana in the natural elements, not in a greenhouse or enclosed structure.

B. Table 5-1, Table of Use Regulations, is hereby amended as follows:

1. Under Principal Uses, Agriculture, the following lines are added:

⁶ 935 CMR 500.050(F)

⁷ 935 CMR 500.050(E)

⁸ 935 CMR 500.050(E)(2)

⁹ 935 CMR 500.050(E)(3)

¹⁰ 935 CMR 500.050(E)(4) (draft regs)

¹¹ 935 CMR 500.050(E)(4) (c)

¹² 935 CMR 500.050(E)(4) (b)

	R-5	R-10	R-15	R-35	R-40	R-80	DB	HB	GB	NB	I	MI
Greenhouse Marijuana Cultivation	-	-	-	-	-	-	SPD	SPD	SPD	SPD	SPD	SPD
Outdoor Marijuana Cultivation	-	-	-	-	-	-	SPD	SPD	SPD	SPD	SPD	SPD

2. Under Principal Uses, Retail and Service, the following rows are added:

	R-5	R-10	R-15	R-35	R-40	R-80	DB	HB	GB	NB	I	MI	
Marijuana Retail Sales	Storefront	-	-	-	-	-	SPD	SPD	SPD	SPD	SPD	SPD	
	Delivery only	-	-	-	-	-	SPD	SPD	SPD	SPD	SPD	SPD	
	Social Consp	Primary	-	-	-	-	-	SPD	SPD	SPD	SPD	SPD	SPD
		Mixed	-	-	-	-	-	SPD	SPD	SPD	SPD	SPD	SPD
Independent Testing Labs	-	-	-	-	-	-	SPD	SPD	SPD	SPD	SPD	SPD	

3. Under “Wholesale, Transportation and Industrial,” the following rows are added:

	R-5	R-10	R-15	R-35	R-40	R-80	DB	HB	GB	NB	I	MI
Indoor marijuana cultivation	-	-	-	-	-	-	SPD	SPD	SPD	SPD	SPD	SPD
Marijuana Product Manufacture	-	-	-	-	-	-	SP	SP	SP	SP	SP	SP
Marijuana Transporter (base of operations)	-	-	-	-	-	-	SPD	SPD	SPD	SPD	SPD	SPD
Marijuana Research	-	-	-	-	-	-	PA	PA	PA	PA	PA	PA

3. Other

Section X, “Additional Use Regulations,” is hereby amended by adding a new subsection 11, captioned “Licensed Marijuana Operations,” as follows:

11.0 Licensed Marijuana Operations

10.91 Proximity to Schools. No marijuana-related operations may occur within two hundred feet (200’) of a pre-existing public or private primary or secondary school, as measured from the nearest point of the school property.

10.92 Controls. No land or buildings may be used for marijuana-related operations except

- (a) in accordance with a license in good standing from the CCC; and

- (b) in such zoning districts as designated in the Table of Use Regulations and subject to such conditions as reasonably may be imposed on time, place and manner by the Special Permit Granting Authority. Such conditions may include, but are not limited to, restrictions on the visibility of operations and goods or equipment associated therewith, outside storage, the emission of noise, odor or fumes, and times of operations.
- 10.93 Scope. The controls imposed by this ordinance on the uses of land and buildings for marijuana-related operations shall apply regardless of the class or type of license issued by the CCC for the site in question. (For example, without limitation, cultivators will be subject to these rules whether they are licensed as a Marijuana Cultivators, Craft Marijuana Cultivator Cooperative, Micro-Business, Research Facility, Registered Marijuana Dispensary or Medical Marijuana Treatment Center as those terms are defined in 935 CMR 500.002.)
- 10.94 Special Events. No land or buildings shall be used for special marijuana-related public events except in accordance with Chapter 94G of the General Laws, regulations promulgated thereunder, and policies and procedures as may be promulgated by the Planning Board.
- 10.95 Hemp. Nothing in this bylaw shall be construed to regulate the cultivation of industrial hemp, as same is regulated by the Massachusetts Department of Agricultural Resources pursuant to General Laws, Chapter 128, Sections 116-123. Use of land or buildings for hemp processing and/or product manufacture shall be subject to such zoning controls as apply to other (non-marijuana) processing and product manufacture operations.

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III. Community Host Agreements

A. Enabling Legislation & Authority

In 2016 the Commonwealth's voters enacted Question 4 and Mass. G.L. c. 94G (St. 2016, c. 334) – legalizing the use of cannabis by adults in Massachusetts – as amended by the state legislature in 2016 (session law c. 351), and 2017 (session law c. 55) (the “new law”). Pursuant to the new law, adults (over 21) in the Commonwealth may possess marijuana, consume it in private or state-licensed premises, and cultivate it for personal use. The new law also authorizes adults in the Commonwealth to purchase cannabis from state-licensed retailers, and enables adults to engage in state-licensed cannabis commerce, including cultivation, manufacturing (extracts and marijuana-infused product production), transportation between licensees, and retail sales (said licensed operations identified under the new law as “marijuana establishments”).

G.L. c. 94G, sec. 1, defines a “host community” as “a municipality in which a marijuana establishment is located or in which an applicant has proposed locating a marijuana establishment;” sec. 1 also defines a “marijuana establishment” as “a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business;” sec. 3(d) of c. 94G states:

A marijuana establishment seeking to operate in a municipality which permits such operation shall execute an agreement with the host community setting forth the conditions to have a marijuana establishment located within the host community which shall include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment. An agreement between a marijuana establishment and a host community may include a community impact fee for the host community; provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment and shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or be effective for longer than 5 years. Any cost to a city or town imposed by the operation of a marijuana establishment shall be documented and considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4.¹³
[References to medical marijuana facilities omitted.]

The new law's authorization of local control over marijuana establishments limits that authority, by banning a municipality from enacting “safeguards on the operation of marijuana establishments” that “are not unreasonably impracticable” (G.L. c. 94G, sec. 3[a]); nor may a municipality “prohibit the transportation of marijuana or marijuana products” nor make such

¹³ Definition of “public records.”

transportation “unreasonably impracticable” (G.L. c. 94G, sec. 3[c]). “Unreasonably impracticable” is defined by sec. 1 of c. 94G as “measures necessary to comply with the regulations, ordinances or by-laws adopted pursuant to this chapter subject licensees to unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a marijuana establishment.”

Nor may a municipality exact a “community impact fee” in excess of 3% of gross sales. The amount of such a fee is limited to no more than an amount “reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment”

The suggested form of Community Host Agreement, below, follows Section 3(d) by stipulating responsibilities, identifying prospective costs to the municipality, and assessing a community impact fee reasonably related thereto. The agreement form is also aimed at fostering a long-term, mutually beneficial relationship between the establishment and the municipality.

B. Form of Community Host Agreement

COMMUNITY HOST AGREEMENT

Dated _____, 2018

Parties

The **Town of Appleton, Massachusetts**, by and through its Selectboard, having a principal office at Town Hall, _____ Street, Appleton, Massachusetts [zip] (hereinafter “Municipality”); and

Millennial Farms, LLC, a Massachusetts limited liability company having a principal office at _____, Massachusetts 12345 (hereinafter “Applicant”).

Background

- In 2016 Massachusetts voters legalized marijuana, authorizing the cultivation, processing, product manufacture and retail sales of marijuana and marijuana products to adults by marijuana establishments.
- Section 3(d) of the new law, MGL Chapter 94G, requires a marijuana establishment to have a community host agreement with the municipality within which it intends to operate, “setting forth,” in the words of the statute,

the conditions to have a marijuana establishment located within the host community which shall include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment. An agreement between a marijuana establishment and a host community may include a community impact fee for the host community; provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment and shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or be effective for longer than 5 years. Any cost to a city or town imposed by

the operation of a marijuana establishment shall be documented and considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4.¹⁴ [References to medical marijuana facilities omitted.]

Applicant proposes to operate a CCC-licensed marijuana establishment in the nature of a _____ to be located at _____, and has gained or expects to gain approval therefor under local zoning; and

The parties intend hereby to stipulate conditions and responsibilities between the Municipality and the Applicant, not covered by local zoning approval processes or CCC-licensing requirements, in accordance with said Section 3(d) of Chapter 94G, quoted above.

WHEREFORE, in consideration of mutual covenants, the parties stipulate and agree as follows:

Terms

1. Community Impact.

(a) *Negative impact.* Municipality reasonably expects to experience the following negative impact arising from the operation of Applicant’s marijuana establishment, and the following costs, imposed by the operation of the marijuana establishment.¹⁵

<u>Anticipated Negative Impact</u>	<u>Anticipated Costs to Municipality</u>
[Describe]	[\$ Itemize]

(b) *Mitigation.* In mitigation of such costs to the Municipality, Applicant shall pay to Municipality, quarterly over ___ years, ___ % of its gross from sales of marijuana and marijuana products, on or before the 15th day following the close of each quarter.

(c) *Positive impact.* Applicant reasonably expects that its success will bring benefits to the town, by attracting more visitors and patrons in local businesses, help revive certain neighborhoods, and bring new revenue and acclaim to the municipality. The parties stipulate that any costs arising out of such positive community impact cannot be ascribed to Applicant as a negative impact under section (a) above.

¹⁴ Definition of “public records.”

¹⁵ This assumes that the establishment is operating in compliance with CCC regulations and local zoning rules and conditions ... for breach of which ample penalties apply.

2. Stipulation of Responsibilities.

(a) *Applicant's Responsibilities.* The Applicant shall:

(1) Maintain its premises in a neat and tidy condition and conduct its operations in a businesslike and professional manner, with due regard for the interests of this community.

(2) If contacted by a representative of the Municipality, the Applicant shall respond immediately and substantively;

(3) Maintain its marijuana establishment license in good standing with the CCC and comply with all applicable CCC regulations;

(4) Comply with any and all conditions imposed by local zoning authorities;

(5) Take strong precaution to prevent of sales of marijuana to under-21s, including, but not limited to [*insert site-specific measures*].

(6) Make reasonable efforts to first hire local vendors and workers, and otherwise to engage the establishment in the local economic mainstream.

(b) *Municipality's Responsibilities.* The municipality shall:

(1) Provide an appropriate forum whereby the views of citizens about the Applicant's operations can be aired and Applicant have the opportunity to address complaints or suggestions that arise concerning Applicant's operations.

(2) Accommodate the installation and use of state of the art security and fire protection/alert systems;

(3) Recognize Applicant as having all the rights, duties and responsibilities of, and deserving of equal treatment with, other business establishments in town.

(4) Annually, on the anniversary hereof, review the determination of community impact described in Section 1 above and adjust the community impact fee up or down to fairly compensate the Municipality for all such costs, but not in excess thereof.

(5) If reasonably requested by Applicant, provide a letter in the nature of an estoppel certificate, stating that the municipality is aware of no outstanding violations of local law or insufficiently addressed complaints.

3. Other. This agreement may not be amended or assigned without the parties' written consent. Nothing herein shall be construed to limit the lawful authority of Municipal agencies to carry out their duties under state and local law.

Signed at Appleton, Massachusetts, this day and year respectively below written.

Municipality
Town of Appleton, Massachusetts
By its Selectboard,

_____, 2018

Applicant
Millennial Farms, LLC

By: _____
Its _____

_____, 2018

III.

Acceptance of Revenue

The new marijuana law allows municipalities to impose a tax on retail sales of marijuana in an amount up to 3%. The tax is collected by the retailer, paid to the Department of Revenue along with other taxes collected, and disbursed by the DOR to cities and towns that elect to accept the revenue.

The authority and process for accepting the revenue is spelled out in Section 13 of Chapter 55, Acts of 2017, quoted in its entirety in the Resolution of the Selectboard, below.

Resolution of the Selectboard of Appleton

Acceptance and Imposition of a retail sales tax on marijuana

Whereas, Section 13 of Chapter 55 of the Acts of 2017, “An Act to Ensure Safe Access to Marijuana,” amended Section 3 of Chapter 64N of the General Laws by inserting in place thereof the following language:

Section 3. (a) A city or town that accepts this section in the manner provided in section 4 of chapter 4 may impose a local sales tax upon sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the city or town to anyone other than a marijuana establishment at a rate not greater than 3 per cent of the total sales price received by the marijuana retailer as a consideration for the sale of marijuana or marijuana products. The marijuana retailer shall pay the local sales tax imposed under this section to the commissioner at the same time and in the same manner as the sales tax due to the commonwealth.

(b) All sums received by the commissioner under this section shall, at least quarterly, be distributed, credited and paid by the treasurer and receiver-general upon certification of the commissioner to each city or town that has accepted this section in proportion to the amount of the sums received in that city or town. Any city or town seeking to dispute the commissioner's calculation of its distribution under this subsection shall notify the commissioner, in writing, not later than 1 year from the date the tax was distributed by the commissioner to the city or town.

(c) This section shall take effect in a city or town on the first day of the calendar

quarter following 30 days after its acceptance by the city or town or on the first day of a later calendar quarter that the city or town may designate[.]; and

Whereas, section 4 of chapter 4 of the general laws provides as follows:

Section 4. Wherever a statute is to take effect upon its acceptance by a municipality or district, or is to be effective in municipalities or districts accepting its provisions, this acceptance shall be, except as otherwise provided in that statute, in a municipality, by vote of the legislative body, subject to the charter of the municipality, or, in a district, by vote of the district at a district meeting[.]; and

Whereas, it is the intention of the municipality of Appleton to impose a local sales tax upon sale or transfer of marijuana or marijuana products by marijuana retailers, as so authorized;

NOW, THEREFORE, the Selectboard of the Town of Appleton, in its capacity as the legislative body of the municipality hereby ACCEPTS the provisions of Section 3 of Chapter 64N, as amended, and hereby imposes a tax of _____ percent (___%) of the total sales price received by the marijuana retailer as a consideration for the sale of marijuana or marijuana products, to be collected as provided therein.

This acceptance shall take effect June 1, 2018. The clerk shall transmit a certified copy hereof to the Commissioner of Revenue, the Treasurer and Receiver-General, and such other agencies or officials as shall be appropriate for implementation hereof.

ADOPTED this ___ day of _____, 2018

The Selectboard

IV. Frequently Asked Questions

1. What MUST a municipality do in response to marijuana legalization?

Nothing, but it would be prudent to take formal steps to claim its share of the new revenue, should any become available. See Section III of this memo.

2. Shouldn't towns wait until the final regulations come out in March?

Nothing in the final regulations will enlarge or diminish the rights or responsibilities of municipalities as laid out in the statute. If there is a drive to enact new bylaws, they should be in effect when people start filing applications to the CCC on or after April 1, 2018.

3. What are the town's options?

A menu is below. But keep in mind:

The regulation of the industry and its participants--from producers to distributors--in all types of marijuana operations, primarily is done by the Cannabis Control Commission. The not only make the rules (the draft regulations run over a hundred pages) but will enforce them as well.

Before any marijuana establishment can be licensed, it must reach a "Community Host Agreement" with the municipality "stipulating responsibilities," a term broad enough to encompass the imposition of special conditions or to exact any special covenants from a marijuana licensee. Host agreements may also require the payment of a "community impact fee."

The options:

- Option 1: Do nothing. A municipality may, but is not required to enact local laws governing the time, place and manner of marijuana establishment operations. It may rely on existing special permit and site plan approval controls to impose necessary "safeguards," and on the host agreement to fill in any local regulatory gaps beyond the scope of state regulations and special permit terms.
- Option 2. Acknowledge and apply ("Montague Model"). Amend existing zoning to acknowledge the prospect of new marijuana businesses in town, prescribing where they may operate, using the existing special permit/site plan approval processes to provide the town with necessary protections in the form of conditions, and to keep the public informed and engaged through notices and

public hearings.¹⁶

- Option 3. *Impose new regulations.* Add a new regulatory section to the zoning bylaw for non-medical marijuana operations, duplicating state requirements and imposing new ones on security, signage, parking, hours of operation, etc., on top of existing special permit/site plan approval processes and the state regulations.
- Option 4. *Stall.* Pass a moratorium delaying consideration of licensed marijuana operations until next year. Until then, monitor developments in other cities and towns.
- Option 5. *Total ban.* Enact a bylaw prohibiting all licensed marijuana operations (and forgo new revenue). If a town said “yes” to legalization in the 2016 election, any such bylaw would have to be submitted to the voters for approval at a regular or special election.¹⁷

4. Is a voter referendum required before a town can authorize social consumption establishments?

No. If the town adopts bylaws to allow them (or if they are allowable under existing zoning), no referendum is required.

5. Is there any limit to the number of licenses the CCC will issue?

No but cities and towns may impose limits on how many marijuana establishments may operate in that town.

¹⁶ This option was specifically acknowledged by the CCC on p. 8 in its “Guidance to Municipalities” dated January 2018 : “Alternatively, a municipality may determine a proposed marijuana-related use falls under an existing use authorized by its bylaws or ordinances.”

¹⁷ GL Chapter 94G, Section 3(e)(3)