

MEMORANDUM

To: Selectmen
From: Chris Hall (Town Administrator)
Date: March 26, 2017

Municipal regulation of recreational marijuana

I attended the quarterly meeting of the MTCCMA (Maine Town, City and County Management Association) in Bangor on Friday March 24th. It was useful to meet other town Managers and Administrators: one or two I knew well of old, but it was good to meet others including Damariscotta Manager Matt Lutkus.

The focus was on the regulation of commercial activities relating to recreational use of marijuana. Unlike medical marijuana, which is a state-regulated activity, recreational marijuana, *other than possession and growth for individual use*, is a municipal responsibility.

The movement for legalization was driven by the following policy objectives:

1. To eliminate the black market.
2. To keep marijuana out of the hands of minors.
3. To ensure that the products sold are safe consumer goods.
4. To generate tax revenue.

Under the law passed in November by referendum, municipalities are responsible for oversight and regulation of the following classes of marijuana business:

1. Commercial growers;
2. Retail sellers;
3. Products manufacturing facilities;
4. Social clubs;
5. Testing facilities (which cannot be connected with any of the first four).

Unfortunately, unlike other states such as Colorado (whose experience was featured at the MTCCMA meeting), municipalities in Maine cannot place an excise or sales tax on marijuana sales. A 10% excise tax (the lowest in the country) will be collected and kept by the state.

Experience in states that have legalized recreational use the longest – such as Colorado and Oregon – suggest that well-funded business interests will move quickly to establish grow-out facilities (in former mill buildings or in purpose-built greenhouses, ideally wherever the electric rates are lowest); and to establish modern, branded retail stores – resembling a fast-food outlet without windows. Social clubs are seen as less likely to spring up quickly (the law requires separation of alcohol and marijuana, so bars cannot sell marijuana). Products manufacturing facilities will likely follow the commercial grow-out facilities.

It was stressed that the interests who will likely establish these businesses quickly “are not Cheech and Chong.” They are backed by Wall Street and possibly by organized crime; they will seek to emphasize their legitimacy by an emphasis on hygiene, controls to prevent minors buying, and paying taxes on audited accounts. However, they present municipalities with a number of issues: odor (although an increasing percentage of consumption is in the form of edibles, often resembling popular candies); increased consumption by minors; and increased incidences of DWI. While the existing, unregulated (and legal medical) marijuana market presents some of these problems, the experience of other states suggests that consumption will rise significantly – and that tourist towns will be targeted for retail sales to summer visitors.

In Maine, recreational marijuana is expected to be a \$250 million business by 2020, compared with a medical marijuana market of \$40 million today. This compares with a projected national legal market of \$20 billion in 2020.

At present, Bristol does not have the ability to control or ban marijuana-related businesses as long as any planning application meets existing code. As a town

without a police force or town-wide zoning, it is in no position to fulfil the expectation that the municipality will regulate this activity.

Bristol voted, as a town, by approximately 55% to 45% against legalization. MTCCMA speakers warned participants to expect that, in the event a Town initiates a discussion on whether and how to regulate sales, extreme advocates for both sides (a complete ban, or unfettered commercial activity) will be outspoken, but that it is important if difficult) to discern what the silent majority really want.

The Town appears to have the following options:

1. Prohibition (the 'dry town' option). Simplest; this may include a sunset provision after (say) two or five years, to allow time to evaluate how the marijuana market is evolving.
2. A moratorium – under MRSA 30-A, section 4356, could be for up to a year; should specify the reasons for the moratorium (e.g. 'pending development of a Town ordinance to regulate marijuana businesses') and may be extended if the Town can show why the stated reasons still prevail.
3. Numerical limitations on licenses. A Town can decide what number of retail stores; if so, should decide what that maximum number is and what the criteria for selecting licensees are ('first come, first served;' lottery; or merit selection - financial strength etc.).
4. Location restrictions for licensees. EG Not within 500 feet of a residence, school or church.
5. Set license fees and conditions. License fees must be proportionate to the actual costs of regulation but could include recovery of costs of policing. Conditions could/should include the right of inspection without notice for law enforcement, code enforcement and fire safety.

Rules must be clear, and show why this industry must be treated differently from other industries – litigation will follow the money.

At present, Bristol cannot bar or set conditions on a business moving to town with the intention of beginning retail sales, or commercial growth, after February 1,

2018. I therefore recommend that Selectmen ask the Planning Board, as the town body responsible for developing and enforcing ordinances, to study the question and determine whether it is appropriate to draft an ordinance. Any such proposal would, I assume, have to be reviewed and approved by Selectmen and then sent to a Special Town Meeting for ratification.