

LITCHFIELD PLANNING AND ZONING COMMISSION

**Town Hall Annex
80 Doyle Road
Bantam, Ct 06750**

April 14, 2022

Board of Selectmen
Town of Litchfield
74 West Street
Litchfield, CT 06759

RE: Public Act 21-1 Cannabis Establishment

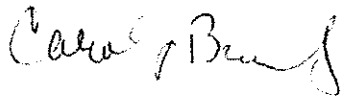
Denise and Selectmen,

The Planning and Zoning Commission enacted a moratorium on cannabis establishments effective until 8/1/2022. Public Act 21-1 became effective July 1, 2021 legalizing the cultivation, processing, distribution, possession and use of cannabis for recreational purposes. Applications for the sale of cannabis will be through regulations drafted by the Connecticut Department of Consumer Protection.

Cannabis establishments are defined as "a producer, dispensary facility, cultivator, micro-cultivator, retailer, hybrid retailer, food and beverage manufacturer, product manufacturer and product packager." Unless established by a municipality through its zoning regulations or by ordinances, the uses will be treated and permitted as any similar type of business under the regulations. With the moratorium looming in the not too distant future, the Commission authorized this letter at it April 4, 2022 meeting requesting a public vote on whether the town should allow the sale and cultivation of adult marijuana.

As pointed out by Commission Attorney Byrne when drafting the language of the moratorium, the regulation of recreational cannabis raises legal, planning and public safety issues. Although zoning can legislate the location and standards by which land is used for the enabled purposes, the impact on the community falls to the chief legislative body – the Board of Selectmen. We, the Planning and Zoning Commission, request the Board to hold a town vote on this matter.

Respectfully,



Carol Bramley
Chairman, Litchfield P&Z

MICHAEL D. RYBAK
mdr@litchlaw.com
ANTHONY F. DIPENTIMA*
afd@litchlaw.com
*Of Counsel
MICHAEL D. RYBAK, JR.*
mdjr@litchlaw.com
*Also Admitted MD and DC

GUION, STEVENS & RYBAK, LLP
ATTORNEYS AT LAW
93 WEST STREET - P.O. BOX 338
LITCHFIELD, CONNECTICUT 06759-0338
860-567-0821
Fax 860-567-0825

H. GIBSON GUION
(1908-1994)
E. SEWARD STEVENS
(1910-1999)
Paralegal:
Mary Ellen D. Holcomb
melh@litchlaw.com

To: Denise Raap, First Selectman
From: Town Attorneys
Re: Cannabis Establishments as a Land Use
Date: 4/28/22

You asked about the procedures by which a municipality may prohibit or regulate cannabis establishments under Public Act 21-1 (June 2021 Special Session) (hereinafter "PA 21-1" or "the Act"). There is a temporary moratorium on cannabis establishments while the Town decides how to proceed.

P.A. 21-1 establishes three avenues for municipal action on cannabis establishments:

- (1) By referendum complying with the requirements of Section 83 of the Act.
- (2) By zoning regulations duly adopted under Section 148 of the Act.
- (3) By local ordinance adopted under Section 148 of the Act.

Each avenue has advantages and disadvantages. A referendum offers the broadest public opinion but costs money. Zoning regulations offer a well-established route to manage land use but involve less public input than a referendum or town meeting. A town meeting offers greater public input than zoning regulations but raises the question of who will enforce the ordinance.

It is important to note that the matter of cannabis establishments is separate from the question of whether the Town will permit cannabis use on municipally owned or controlled property.

Referendum

P.A. 21-1 (June 2021 Special Session), Section 83(a), provides, that upon petition by not less than 10% of the electors of the municipality, lodged with the clerk at least 60 days before the date of any regular election, a vote shall be taken to determine: (1) Whether or not the recreational sale of marijuana shall be permitted in such municipality, or (2) whether the sale of marijuana shall be permitted in such municipality in one or more of the classes of state license.

The ballot must use one of the three questions provided by the General Assembly:

"Shall the sale of recreational marijuana be allowed in the Town of Litchfield?"

"Shall the sale of cannabis under (Specified license or Licenses) be allowed in the Town of Litchfield?"

"Shall the sale of recreational marijuana be prohibited (No Licenses) in the Town of Litchfield?"

No elector can vote for more than one designation. The result takes effect on the first Monday of the month after the election and stays in effect until another vote is taken. The referendum offers broad public input but is limited to the specific questions prescribed by the P.A. 21-1.

The referendum questions chosen by the state do not give guidance as to what comes next. If a referendum legalizes the establishments, it still does not address questions of operation, location, hours, etc. Further action would be needed to establish the rules for such establishments. If the referendum makes the establishments illegal, it still does not establish a fine or the hearing mechanism for violations. Finally, a referendum does not answer the question of which municipal official or commission is enforcing.

Zoning Regulations

P.A. 21-1, Section 148, offers a second method of enacting cannabis land use regulations by zoning. Zoning through the customary regulation adoption process: (1) may prohibit cannabis establishments, or (2) establish reasonable regulations regarding the types of establishments, locations, hours, signage, and (3) restrictions on the proximity of cannabis establishments to certain types of neighboring properties and to each other. A special permit may be required which allows for a site plan, a public hearing on the application, and conditions of approval.

Once the regulations are adopted, the chief zoning official of a municipality must report, in writing, any zoning changes adopted by the municipality regarding cannabis establishments pursuant to this subsection to the Secretary of the Office of Policy and Management and to the Department of Consumer Protection not later than fourteen days after the adoption of such changes. Any Zoning regulations adopted must comply with the list of limitations in Section 148.

Ordinance

Section 148 authorizes municipalities to enact ordinances prohibiting, allowing, or regulating cannabis establishments. The Act is less specific about adoption of ordinances in lieu of zoning regulations or a referendum. Traditionally, ordinances are not a substitute for zoning regulations in a municipality which has adopted zoning. The Act, however, does not specifically limit the use of an ordinance to regulate cannabis establishments to only those towns that have not adopted zoning.

Section 148 does not describe the specific way in which the ordinance must be adopted. Given that no specific method of such adoption is provided, the traditional means of ordinance adoption are

available, namely a town meeting. We recommend that if an ordinance is to be used to regulate cannabis establishments, it must comply with the requirements of Section 148 for any zoning regulations to be adopted.

The ordinance may: (1) prohibit cannabis establishments, or (2) establish reasonable restrictions regarding the types of establishments, locations, hours, signage, and (3) restrictions on the proximity of cannabis establishments to certain types of neighboring properties and to each other.

If an ordinance is adopted, the Town would need to advise Secretary of the Office of Policy and Management and to the Department of Consumer Protection not later than fourteen days after the adoption of such changes in the ordinance.

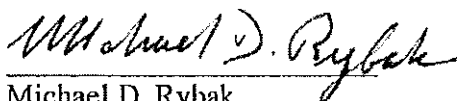
As with the referendum, adopting an ordinance at a town meeting does not necessarily make it clear who would enforce the ordinance. The ordinance would probably need to name which municipal official will enforce.

Town meeting or referendum "advisory vote"

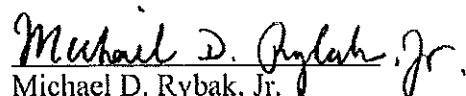
Although the law does not specifically authorize the Board of Selectmen to warn town meetings on advisory questions, if a town meeting is previously warned, e.g., the annual budget meeting, we see no reason why the Selectmen cannot add one of the three questions to the warning for a discussion and "advisory vote" of the residents present at the town meeting. We are not aware of any authority in Sections 83 and 148 which would allow the Board of Selectmen to place an advisory question on the ballot at the November 8 election. The Town Clerk may also wish to pose this question to the Secretary of the State's elections attorneys.

Ultimately the Board of Selectmen and the Planning and Zoning Commission should reach an understanding about how to proceed. There also remains the possibility of a petition originating from a group of the community residents to bring the matter to a referendum. Whichever avenue is chosen, the Town should adhere as closely as possible to the wording of the Act to protect the outcome from legal challenge.

If you have any questions, please feel free to contact us.



Michael D. Rybak
Guion, Stevens & Rybak LLP
Town Attorneys



Michael D. Rybak, Jr.
Guion, Stevens & Rybak LLP
Town Attorneys