

Vermont CCB Subcommittee for Market Structure, Licensing, Taxes, and Fees

Meeting Minutes – September 20, 2021

Dan Smith called meeting to order at 5:00pm.

Subcommittee members in attendance:

Chris Walsh, Advisory Committee
Sivan Cotel, Advisory Committee
Stephanie Smith, Advisory Committee
Dan Smith, VS Strategies
Jen Flanagan, Vicente/Sederberg
Andrew Livingston, VS Strategies
Gina Kranwinkel, NACB
Tom Nolasco, NACB (joined late)
Mark Gorman, NACB
Geoffrey Gallegos, NACB

Members of Vermont Cannabis Control Board in attendance

James Pepper, Chair
Did not catch who else was in the room

Minutes recorded by Geoffrey Gallegos. Previous meeting minutes were approved by motion of Chris Walsh. Stephanie Smith seconded.

Dan Smith initiated the conversation with a focus on local fees, state fees, projected budget numbers, and a survey of fees from other states. The remaining conversation about license types from the previous meeting should be tabled. A preliminary discussion draft of the topics covered thus far will be circulated by 9/23.

LOCAL FEES

The topic of the report needs to include how the proposed fees will cover costs of CCB operations, and how local fees could cover the costs incurred by the hosting municipality. He reminded that all fees incurred by a business (building permits, etc.) are not included in the local license fee. Need to distinguish state costs versus local costs. These include inspections and other state-level costs not charged to the local municipality.

Jen Flanagan asked the CCB to consider what a local fee is, and what should it cover. In general, local fees are lower than state fees (\$100.00 - \$200.00). Since the local fee has to cover the cost of services, we need to know what services are provided (clerical costs of processing, etc.). Since fees related to other industries are so low, fees related to cannabis should be similar (\$50.00- \$45.00).

Sivan Cotel reminded that a local municipality has authority to impose a 1% local option tax on top of the existing 6% state tax. This may apply to cannabis. He highlighted that a \$25.00 - \$35.00 clerical fee is normal in Vermont. He requested feedback from the Vermont League of Cities and Towns (“VLCT”). He also wondered if some cities and towns are looking to cannabis as a cash grab, rather than a way to pay for increased enforcement costs.

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Jen Flanagan reminded that a cannabis business is going to pay other fees for the build-out of their business. She asked if there going to be an additional fee on top of these other fees. Since Vermont does not have high fees for other businesses, it may not be wise to impose high fees on a cannabis business simply because of the product they sell. She suggested a maximum-level fee for local municipality, and allow it to charge as much as the cap permits.

Sivan Cotel agreed and reiterated the importance of VLCT feedback. He suggested no local fees unless VLCT can explain why a local fee is justified. He also does not want to see a cannabis money grab from locals.

Stephanie Smith added that services should be provided for any fees charged. There are already zoning fees and signage fees, so what is the purpose of additional fees.

Andrew Livingston asked if Vermont is like other states' statutory requirement that fees need to be tied to administrative costs, or can Vermont set fees as an adjunct way to raise tax revenue. Jen Flanagan cited Act 164, saying that after administrative and collection costs, the CCB pays local licensing fees quarterly to the municipality.

Sivan Cotel offered that Vermont has a tradition of fees tied to a service, but not a written law.

Dan Smith added that the CCB has started outreach to local officials to find out how towns anticipate the impact of cannabis, but does not address what fees should be. So far the takeaway is that local officials have uncertainty about cannabis, are hesitant around cannabis, and aren't really sure how to handle the issue before the regulations are released.

Jen Flanagan shared that town officials are probably waiting to find out what their role is in this structure, and waiting to hear guidance from the CCB. In Massachusetts, the common question from localities to the Cannabis Control Commission was, "What do we do?"

Dan Smith summarized the thought by saying that Vermont's tradition of low local fees, while adding in experiences in other states where there aren't as many ancillary costs as projected, the recommendation could be to allow towns to set a local fee with a reasonable cap on the fee, depending on future conversations with municipality. Idea is to cover the processing fee rather than projected potential costs (increased traffic flow, etc.).

Stephanie Smith agreed that fee should cover administration of the local control board's processing of the application that feeds into the state CCB.

Sivan Cotel suggested a maximum \$100.00, unless VLCT explains why it should be higher. Chris Walsh agreed with the \$100.00 cap. Stephanie Smith also agreed.

Dan Smith asked if the \$100.00 fee is reasonable statewide. Jen Flanagan said yes.

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STATE BUDGET/STATE FEES

Dan Smith moved the discussion to the budget and state fees, and the requirement that fees cover the operational costs of CCB. Two challenges are that costs associated with starting any business are higher up front (because there's not revenue yet), and the push to provide as many low cost licenses as possible. The goal is to find a way to spread the costs around multiple types of licenses rather than charging very high fees for a few licenses.

He cited the note from the Vermont Legislative Joint Fiscal Office, which estimated the costs of the CCB budget at \$650,000.00 for FY21, \$1,010,000.00 for FY 22, and \$940,000.00 for FY23. After discussions with CCB, and considerations not contemplated by the Fiscal Note, he feels that this estimate is lower than accurate. As a result, higher fees may need to be imposed. The Fiscal Note also projects a \$1,800,000.00 budget deficit from fees by FY24, because the fees will have paid back the money paid out front. The main point is that the resulting cannabis fees may be higher than what Vermont is used to from other industries. The 9/23 meeting will explore some different estimates, all involving a degree of guesswork.

Chair Pepper reminded the group to include the specialty license types (like Craft Licenses) when considering the overall fee structure. These other types could help to defray some of the costs.

Dan Smith agreed. He explored different ways for the Subcommittee to present the recommendations to the Board, preferring the approach of considering license fees based on other states comparable to Vermont, and adding the potential of the other licenses types that could raise additional revenue that had not been considered by the Legislature. The desired result is to raise the necessary revenue by emphasizing smaller and easier-to-access types available (lower-level cultivators, creative retail approaches, event licenses).

He offered two sets of recommendations: (1) Based on basic licenses trying to cover costs within 10 years; and (2) Based on the availability of a larger quantity of smaller license types (both cultivators and retail) to approach creative ways to raise revenue. He reminded the group that cannabis will likely pay for itself over time, and tax revenue will eventually be much larger than operating costs. He polled the Subcommittee members for their position on two sets of recommendations.

Sivan Cotel agreed with a caveat, that he does not think it's going to make much difference between the two. The lion's share of the expenses will be covered by traditional retail, cultivation, and manufacturing companies. The specialty licenses probably won't account for a big chunk of the raised revenue.

Dan Smith felt this was accurate. If legislature thinks that its valuable to not require the smaller operators to pay back the upfront costs, and use tax revenue instead of placing the a burden on the business owners

Sivan Cotel asked Andrew Livingston what the VS model projects the total number of licensees Vermont will have. Is it 1,000, more, less?

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Andrew Livingston answered that the VS model looks at square footage and the volume of daily extraction capacity (ideally averaging 400 pounds). Regarding cultivation square footage, it depends on how small they are. He estimated somewhere in the mid-hundreds of licenses, and would be surprised if it were more than 1,000 total licensees. This could vary based on geography and season.

Dan Smith offered a ratio of retail stores to consumers. Based on the model, if Vermont followed Alaska's ratio, it would have 156.7 retail locations. If Vermont followed California's ratio, it would have 18 retail locations, if Vermont followed Colorado's ratio, it would have 79 retail locations.

Stephanie Smith raised the issue of fees that individuals who will be working at the cannabis establishments. Dan Smith said that these types of fees (background checks, employment qualifications, etc.) would apply to market structure, and suggested that the Social Equity Subcommittee contribute to this consideration. Probably want to keep the fees on the employees low.

Stephanie Smith informed the group that in the medical program, the statute requires that the fee for the employee background check be paid by the establishment. The employee doesn't pay the fee. She asked if there would be a straight fee, a higher initial fee, a lower renewal fee?

Dan Smith suggested a provisional license (with an initial fee) signaling an intention to apply, followed by a formal application (with a fee), then an annual fee if awarded a license. Since there is a push to create a lower barrier to entry, the annual fee should not be higher than the cost of a license.

Sivan Cotel offered that in the alcohol industry, the cost for the initial license is the same as the cost to renew it.

Andrew Livingston offered that the application fee should cover the cost of reviewing and adjudicating the application. The initial licensing fees should be designed to support initial creation and structure of the CCB. This creates room for adjustment over time, as regulation is ongoing. In a smaller state with a streamlined regulatory oversight, the upfront cost can be limited. CCB could preserve low fees by delegating some of the inspection and enforcement to existing agencies

Jen Flanagan reminded the group that the CCB needs money to operate. It is legislatively mandated, and could be hard to balance low fees with operating costs.

Dan Smith presented an option of a higher application fee to cover costs for the first recommendation, and even out the application fee and the renewal fee on the second recommendation.

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Chris Walsh offered a lesson from the rollout of the hemp program. There was a \$25.00 licensing fee, a lot of people signed up, and ended up doing nothing with the license. If there are unlimited licenses available to small-tier adult-use cultivators, a provisional license fee could operate as a barometer to gauge interest in the adult-use program. He suggested a “real number” for the fee, with the availability of a rebate if the license moves forward. Could get a more accurate survey if the initial cost creates a pause. If you move forward, the cost is applied towards the overall fee.

Dan Smith felt that this idea would be appropriate if it were standard for all of the license types, not just the small ones.

Chris Walsh suggested that the regulatory burden would be felt most heavily in the smaller types, especially if there is an unlimited number available. If there were 1,000 micro licenses, what does that mean for regulation and enforcement? He is curious to know the degree of interest for micro licenses.

Sivan Cotel supported this idea, and offered that instead of a rebate, the provisional fee operates as a credit towards the licensing fee. Applicants should think of the initial fee as a nonrefundable deposit, nothing less than \$500.00 so the process is taken seriously. Chris Walsh agreed, because the low license fee set the hemp program on the wrong course.

Stephanie Smith reported to the group that the \$25.00 hemp fee has since been increased. At the beginning of the hemp program, there were 1,300 total registrants, with a portion of those considered processors, and had 9,000 acres booked for cultivation. Not all of that land was cultivated. In 2021, there were only 343 registrants. Does not have the grower number. “We are still sitting on hemp from 2019.” Sivan Cotel said that this is the exact point. 1,300 to 350. Andrew Livingston reminded the group of the market crash since 2019.

Dan Smith understands the need to prevent frivolous applications to process.

Sivan Cotel asked if provisional licenses could act as a system of prioritization. Dan Smith said that Social Equity Subcommittee is looking at prioritization. Gina Kranwinkel confirmed that Social Equity is looking at this.

Dan Smith opened the floor for public comments.

PUBLIC COMMENT (summarized)

Dave Silberman

Appreciates the progress of the Subcommittee. A \$500.00 provisional application fee does not scare him. Feels that someone investing in a licensed cannabis business should be able to come up with this amount. He does not want to create an incentive to rush through the application process by prioritizing review based on the order of submission. Wants to make sure that applicants have time to prepare an accurate application with truthful information. A good application takes time. Vermont has limited legal services in this area.

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Sivan Cotel recognizes the adverse incentive, and offered an approach similar to rolling college admissions. Andrew Livingston also had not considered the limited legal services available.

[End of Public Comment]

Stephanie Smith compared the Massachusetts licensing tiers, and asked if there was a minimum cultivation space considered. Dan Smith would prefer having no minimum, but gauge tiers based on the maximum. Not necessarily a tier of 1-10 square feet, but create tiers below 1,000 square feet.

Sivan Cotel suggested tiers “up to x”. Up to 1,000, up to 5,000 etc. Want to give people the option to apply for higher tiers as the cultivation operation expands. People will be encouraged to be realistic when background checks and other compliance expenses add up. Don’t have to worry about minimums. Give business the option to pause as well, and not fall out of compliance if they fall below the maximum of the lower tier.

Andrew Livingston compared Massachusetts and Colorado, because they both have the requirement that the cultivator show they are growing at a certain capacity before they can bump up to the next highest tier. In these states, the regulatory agency has authority to step in and compel the licensee to drop down a tier if they aren’t generating the appropriate capacity. This prevents a vast amount of underused cultivation space.

Sivan Cotel would not want to have CCB authority in this way. Would rather see the business have the financial incentive to make the decision based on potential loss.

Jen Flanagan brought up the issue of safety. If the business cannot sell the amount they cultivate, the risk is diversion, so the business would be dropped down a tier at renewal.

Sivan Cotel moved to adjourn. Chris Walsh seconded.
Meeting adjourned at 6:01pm.