

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

Meeting Minutes – September 27, 2021

Dan Smith called meeting to order at 1:00pm.

Subcommittee members in attendance:

Chris Walsh, Advisory Committee (arrived late)

Stephanie Smith, Advisory Committee

Sivan Cotel, Advisory Committee

Dan Smith, VS Strategies

Jen Flanagan, Vicente/Sederberg

Andrew Livingston, VS Strategies

Gina Kranwinkel, NACB

Tom Nolasco, NACB

Mark Gorman, NACB

Geoffrey Gallegos, NACB

Members of Vermont Cannabis Control Board in attendance

James Pepper, Chair

Kyle Harris, CCB

*Did not catch who else was in the room*

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

Dan Smith began the meeting by continuing the discussion of proposed license types and fees. Since there are a number of variables, three different dynamics (based on potential interest in joining the market) have been created to estimate where fee revenue would be. There are also two sets of recommendations: Proposal A—where fees will cover costs and pay back the money that's been appropriated; and Proposal B—Lower fees that may attract more small businesses to the market.

Sivan Cotel questioned the logic of designing tiers that are so different in size from indoor to outdoor cultivation, and also so different in price.

Dan Smith answered starting with indoor vs. outdoor cultivation. First, the outdoor program is likely to be where the smaller cultivators will want to join, because they may be trying to supplement their other activities with cannabis, or with a dedicated small cannabis grow. This plan is trying to create lower cost to entry licenses for smaller cultivators. Secondly, the model has been factored with a lower supply coming from the outdoor market. Vermont will probably have a single harvest from outdoor grows, and will come when demand will be at its lowest (between foliage season and ski season). If there are too many outdoor producers, it could create a surplus/shortage at the wrong times. This same reasoning applies to the fees. Indoor is more expensive, so higher fee totals would be expected to help cover costs.

Andrew Livingston reminded that this is all a proposal, and can be adjusted based on Subcommittee discussions. Could go to 1,000, 2,500, and 5,000. Could go to 1,000, 3,000, 6,000. Could go 1,000, 2,000, 4,000. He said that Brynn Hare felt it was optimal for the

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outdoor option to be under an acre in order to reduce potential bureaucratic issues found with larger grows. But having too many tiers could be too complicated.

Sivan Cotel wanted to know what the CCB is encouraging. He respects the goal of avoiding an oversupply. But he felt that there would be a lot of disappointed Vermonters if outdoor cultivation were limited to 10,000 square feet. Consider how farmers may want to repurpose their fields for cultivation, and how those properties are already larger than 10,000 square feet. Chair Pepper responded with a question. If outdoor is one harvest per year, and indoor is three to five harvests per year, shouldn't there be a ratio, such as 1,000 square feet of outdoor is equal to 4,000 square feet of indoor?

Andrew Livingston added the differences in production as well. If indoor growers are only getting three harvests per year they are probably under-producing. They should be yielding 4½ to 5½ harvests per year. Could adjust tier sizes and fees to match. Dan Smith agreed, and reminded the group that the process has been walking backwards from statutory mandate, where fees are expected to cover costs. All of it can be adjusted using a different ratio. Could also create other larger tiers, because CCB has authority to expand based on market dynamics. If the rush of small cultivators doesn't materialize, then it would allow board to expand and allow for larger tiers at rollout. Could also allow companies to grow into larger tiers if they are producing more than the lower tier allows.

Kyle Harris asked about mixed-light greenhouses, and if they would be considered part of the indoor cultivation license. Andrew Livingston clarified that the way to differentiate indoor versus outdoor is whether or not flowering plants are getting a light cycle that is different from the normal rise and set of the sun. An outdoor license could have veg plants that start indoors, and then moved outdoors when they start flowering. In contrast, if there is a light deprivation greenhouse augmented with additional lights or blacking the greenhouse out, it functions as equivalent to indoor as far as a production cycle. In that case, the outdoor greenhouse would need an indoor license. He doesn't recommend a separate license for mixed-light greenhouses.

Stephanie Smith added that an indoor grow is more than one harvest, and suggested that regardless of mixed light greenhouses, a single harvest using natural light should be considered outdoor, and multiple harvests should be considered indoor. Andrew Livingston offered to help tweak the regulations, but cautioned about the level of California's cumbersome multitude of license types. Chair Pepper also preferred a clear definition versus additional types.

Dan Smith noted that the group will adjust the outdoor tiers to align with the number of square feet in an acre so it will be streamlined with other laws and land review procedures. Could also build out another one or two outdoor tiers to allow for higher canopy either immediately upon licensure or at CCB discretion. Andrew Livingston suggested that the square footage sizes between indoor and outdoor should be the same. Dan Smith also noted that the fees could be adjusted to the ratio mentioned earlier and still be low.

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Sivan Cotel and Stephanie Smith both agreed that fewer tiers are better. Sivan Cotel suggested the outdoor tiers be under 1,000, under 5,000, under 10,000 instead of 1,000, 3,000, 6,000, 10,000. Indoor could be under 1,000, under 5,000, under 15,000, under 50,000. Thinks that there are more tiers than needed. Andrew Livingston said it could be done.

Dan Smith moved to the delaying of larger cultivation license tiers. Purpose would be to create opportunity for smaller businesses to get in while creating a safety valve to allow for larger companies to enter if the small growers can't supply the market. Chris Walsh agreed with the concept. Sivan Cotel agreed with a caveat that it be easy for a smaller cultivator to rise to a higher tier when they can build towards it. Dan Smith agreed that if you can show demand, you could expand.

He then moved to the existing businesses (the future Integrated Licenses). The proposed \$50,000.00 fee would be in addition to a \$50,000.00 contribution that is already earmarked for the Cannabis Business Development Fund. The first year would be \$100,000.00 in total, and then renewing at \$50,000.00 in subsequent years. Wants to balance the initial upfront cost for how big the current facilities are, and to keep it aligned with the overall goal of lower fees.

Sivan Cotel mentioned that in comparison to the alcohol industry, these fees are astronomically high. For alcohol, someone can get a manufacturing license for \$1,000.00 whether they are distilling 100 cases a year or 20,000 cases a year. He felt that when people see these proposed fees, they would feel as if they are getting double taxed. There's already going to be a lot of taxes. Vermonters might feel that this is very different than how the state has approached other analogous industries. He also recognized that the statute has mandated the extra contribution to the Fund.

Stephanie Smith asked what other states are doing. Dan Smith answered that it's still lower than the other states, even though the markets are different. Illinois is pretty high. Maine and Alaska are more comparable markets. Stephanie Smith thought about adjacent states and possible competition. Someone who can relocate easily might go to the other state if they prefer the approach. Dan Smith wants to avoid outliers when compared to similar markets. Andrew Livingston offered that cultivation in Maine is set up for outdoor tiers at 1,500, 5,000, 15,000, and indoor tiers are 3,000, 10,000, 30,000. Seems similar to this proposal.

Jen Flanagan asked if fees are tied to operating budgets in any other industry in Vermont. Nobody knew. Dan Smith said that the enabling statute could be the main reason that this approach is unique to cannabis.

Sivan Cotel offered that the retail licenses fees look like where they should be for Vermont. Chris Walsh felt that retail looked a little low overall, and could go up. He asked if renewal fees would be the same. Dan Smith said the renewals would be the same every year. Chris Walsh recommended that the initial year be higher than \$5,000.00, and possibly reduce the renewals.

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Dan Smith reminded that the fees vary widely among states. Michigan and Nevada are at \$20,000.00-\$25,000.00. Massachusetts is \$10,000.00. Maine is \$2,500.00. He asked if businesses located outside of Burlington would have a hard time making a storefront work with smaller populations.

Chris Walsh answered that this is where the Limited Retail License would work. In a smaller town where a dedicated brick and mortar store won't support rent and build-out, the Limited Retail would work. He is not suggesting tripling the retail fee, but just to have a higher initial license for a storefront, and then renewing at \$5,000.00. Dan Smith reminded that Proposal A is designed to generate \$1.7M. If storefront is increased, some of the others could be lowered.

Sivan Cotel expressed concern about having a higher fee, and lower later. He wants to avoid falling into preconceived bias that only Burlington will have full storefronts, and that everyone else will have corners of general stores. There are a lot of in between places. His community is a town of 2,000 people, yet it has a vibrant Main Street with a small CBD shop that could be a small full storefront in the future. He felt that there are places in Vermont that will expect a dedicated store, not a corner. Don't want to discourage potential licensees that could make it work in a smaller town.

Stephanie Smith also thinks that there would be a number of small storefronts sprinkled throughout Vermont. She also thinks that the initial fee and renewal fee should be the same, because it would be less confusing to have a consistent number.

Jen Flanagan added that while looking at fees, to consider what the enforcement costs could be for the CCB. There are many facets of regulatory structure that need to be accounted for. Dan Smith said that the CCB has the power to adjust or fix these projections as they go forward. Lots of regulatory boards have had to go back and make changes to the first pass.

He asked if the ratio for manufacturing license fees work for everyone. Sivan Cotel agreed. Nobody objected.

Dan Smith will send revised structure to Subcommittee members before the next meeting. A vote will be held on the next gathering, as well as clarifying the boundaries of each license type, and including the sale of seeds and clones for the Retail License types. The group will also consider whether to go with Proposal A (higher revenue) or Proposal B (lower fees). He asked the Subcommittee if there are any places where the fees are too high.

Sivan Cotel felt that the fees all look reasonable. If the committee agrees, we may not need to pursue an alternative fee structure. He doesn't foresee people running with pitchforks. Dan Smith added that if the lower fee proposal is chosen, the fees would be disproportionately lower for the smaller license types. The larger businesses probably

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have access to more capital. Sivan Cotel commented that the Social Equity Subcommittee will be proposing further reductions.

Chair Pepper returned to the topic of testing labs. Would testing labs that are certified through hemp program need to pay an additional fee for cannabis? Also needs to consider a delivery license type and what the delivery fee would be. Also need to consider how the delivery program would impact a retail location.

Dan Smith would like to align the lab fees with the hemp program, and attract labs to the state. Possibly by charging a one-time fee that would cover both hemp testing and cannabis testing, as well as permitting labs to test homegrow products.

Stephanie Smith informed the group that there is no prohibition on any approved lab to test hemp or cannabis. They are already ending up with cannabis by testing for hemp. She does not want to impose a new prohibition.

She asked about a wholesaler license. Is this an aggregator of products that are already labeled? Dan Smith said a wholesaler can purchase from a licensee and sell to other licensees, but cannot produce its own product, or sell directly to a consumer. Stephanie Smith asked what would happen if somebody wanted to white label. Dan Smith answered that a white label would likely be a Tier 2 manufacturing license. Could be a good entry-level license. Could be defined in different ways while preserving distinguishable characteristics and avoiding overlap.

Chris Walsh asked for clarity. Don't need wholesale if you have cultivation or manufacturer licenses? Dan Smith felt like yes. Sivan Cotel anticipates that there will be existing wholesalers of other industries (alcohol, produce) wanting to jump in to the cannabis market as an add-on to their business. Dan Smith reinforced that this is the vision. Gives cultivators a way out of distribution.

### **PUBLIC COMMENT (summarized)**

Dave Silberman

The statute permits wholesalers to process and package products. Feels that white labeling will be ok. Does not allow manufacturing or production of products. On fees, I like what I see, the low fees at low levels. I agree with Chris, that the retail fee seems lower than it could be. \$5,000.00 will translate to about 3½ pounds of wholesale input, which is not very much. Likes the seeds and clones license fee is low. Concerning the Integrated License, it is one license that allows for all activities of all the other licenses. The Integrated License type should cost at least the sum of all the other license type fees. If you add the cost of a 25,000 square foot indoor grow, a retail storefront, a Tier 1 manufacturer, a wholesaler, and a testing lab, the total is \$67,000.00. Seems like \$50,000 is a little low. Does not make sense to have the fee be anything other than the sum of all. Should be the sum of all plus a little more to reflect the exclusive sales period at rollout. Could be a political question, but this is the only logical approach I can think of.

A simultaneous trio of motions to adjourn occurred. Meeting adjourned at 6:01pm.