



Legislation Details (With Text)

**File #:** 19-689      **Version:** 1

**Type:** Petitioner Request      **Status:** Agenda Ready

**File created:** 7/3/2019      **In control:** City Council

**On agenda:** 7/16/2019      **Final action:**

**Title:** Consider the petitioners' request for the City of Naperville to authorize the retail sale of adult-use cannabis and:

Option 1: Direct staff to prepare an ordinance amending the zoning code to allow the City Council to consider allowing the local retail sale of adult-use cannabis, including appropriate Planning and Zoning Commission review; or

Option 2: Direct staff to prepare necessary documentation for the City to consider prohibiting (opting out) of allowing the local retail sale of adult-use cannabis; or

Option 3: Direct staff to administer a community engagement survey on the topic of whether to allow the local retail sale of adult-use cannabis and report findings at a future meeting.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Petitioner Email, 2. Ordinance 13-162

Date	Ver.	Action By	Action	Result
7/16/2019	1	City Council	directed staff	Pass

**CITY COUNCIL AGENDA ITEM**

**ACTION REQUESTED:**

Consider the petitioners' request for the City of Naperville to authorize the retail sale of adult-use cannabis and:

**Option 1:** Direct staff to prepare an ordinance amending the zoning code to allow the City Council to consider allowing the local retail sale of adult-use cannabis, including appropriate Planning and Zoning Commission review; or

**Option 2:** Direct staff to prepare necessary documentation for the City to consider prohibiting (opting out) of allowing the local retail sale of adult-use cannabis; or

**Option 3:** Direct staff to administer a community engagement survey on the topic of whether to allow the local retail sale of adult-use cannabis and report findings at a future meeting.

**DEPARTMENT:** City Clerk's Office

**SUBMITTED BY:** Mike DiSanto, City Attorney; Pam Gallahue, PhD, Director-City Clerk; and Allison Laff, TED Deputy Director

**BOARD/COMMISSION REVIEW:**

N/A

**BACKGROUND:**

**Medical Cannabis**

In August 2013, the State of Illinois enacted the Compassionate Use of Medical Cannabis Pilot Program Act. This Act, which pertains to the cultivation and dispensing of medical cannabis for use in serious diseases causing chronic pain and debilitating conditions became effective on January 1, 2014. Per this Act, cultivation centers and dispensing facilities will be permitted to locate within any municipality, subject to the limitations imposed by the Act. If so desired, municipalities were permitted to impose more stringent zoning regulations pertaining to allowable locations of such facilities, provided that no local ordinance could prohibit these facilities outright.

Accordingly, in 2013, Ordinance 13-162 was enacted by City Council to reflect the following:

1. Cultivation centers are permitted as conditional uses in the RD, ORI, and I zoning districts;
2. Dispensing organizations are permitted as conditional uses in the B2, B3, and HS districts;
3. Dispensing organizations are permitted by right in the RD, ORI, and I zoning districts;
4. In any zoning district in which a dispensing organization may locate (either by right or through the conditional use process), said facility may not be located within 250 feet of the property line of an area zoned for residential use or within 1,000 feet of a pre-existing public or private school or daycare; and
5. Drive-through facilities will be prohibited at dispensing organizations and retail sales within the dispensing organization shall be limited to 10% of the total square footage of the unit.

**Adult-Use Cannabis**

On June 25, 2019, Illinois Gov. J.B. Pritzker signed into law the Cannabis Regulation and Tax Act (CRTA) legalizing and regulating the production, consumption, and sale of cannabis in Illinois. It was approved by both houses by May 31, 2019 and will come into effect January 1, 2020.

Under the CRTA, personal possession of up to 30 grams of cannabis is legal for Illinois residents at least 21 years of age, with lower limits for non-residents. The 610-page CRTA contains a variety of other provisions concerning matters such as employee workplace policies and criminal record expungement provisions.

**Local Regulation of Consumption**

Municipalities may not restrict the private consumption of cannabis that is authorized by the CRTA. However, the CRTA prohibits the use of cannabis in public places, schools and child care facilities among other locations. Municipalities may adopt and enforce local ordinances to regulate possession and public consumption of cannabis so long as the regulations and penalties are consistent with the CRTA.

**State Licensing**

The CRTA authorizes the production and distribution of cannabis and cannabis products through state-licensed cultivators, craft growers, infusers, transporters and dispensaries. The CRTA creates the position of Illinois Cannabis Regulation Oversight Officer within the Illinois Department of Financial and Professional Regulation, and the Adult-use Cannabis Health Advisory Committee within the Illinois Department of Human Services to regulate the adult-use cannabis industry in Illinois.

Cannabis transporters will be separately licensed by the CRTA, as well. A market study due in March 2021 will inform future licensing.

The state will issue licenses according to a graduated scale. By the end of the first year, there will be up to 295 dispensing organizations. The CRTA will allow up to 500 dispensing organizations by January 1, 2022. Cultivators will be capped at 50 and 100 craft growers will be allowed. By that same date, 100 infusers will also be authorized to be licensed.

### **Home Grow Limited to Medical Program Participants**

Home grow cannabis will be authorized for medical cannabis program participants only, is limited to five plants in their residence, and subject to specified restrictions. Home grow of recreational cannabis by non-medical participants is prohibited.

### **Zoning**

The CRTA preserves local zoning authority and directly authorizes municipalities to opt out, or significantly limit the location of cannabis businesses, by ordinance. Municipalities have the authority to enact reasonable zoning regulations that are not in conflict with the CRTA. This would include the authority to opt out of either commercial production or distribution (dispensaries) of adult-use cannabis within their jurisdiction.

Municipalities also may enact zoning ordinances and regulations designating the time, place, manner and number of cannabis business operations, including minimum distances between locations through conditional use permits.

### **Local Revenue**

Municipalities, by ordinance, may impose a Municipal Purchase Excise Tax on adult-use cannabis products of up to 3% of the purchase price, in .25% increments. Counties may impose up to 3.75% in unincorporated areas, in .25% increments. The taxes imposed under the CRTA shall be in addition to all other occupation, privilege or excise taxes imposed by the State of Illinois, such as sales tax.

### **State Revenue**

State revenues derived from the CRTA will be deposited into the state's Cannabis Regulation Fund. The funds will be distributed to multiple state agencies for implementation of the CRTA. The legalization of adult cannabis also includes a new source of Local Government Distributive Fund (LGDF) dollars. A portion of the Cannabis Regulation Fund (8% of deposits) will go to local governments as LGDF to be used to fund crime prevention programs, training and interdiction efforts. The Cannabis Regulation Fund is derived from moneys collected from state taxes, license fees and other amounts required to be transferred into the Fund.

### **Current Request**

On July 2, 2019, representatives from Grassroots Cannabis and Green Thumb Industries sent a joint email to staff requesting to begin operating adult-use cannabis dispensaries in the City of Naperville as soon as January 1, 2020.

Green Thumb Industries (GTI) is a national cannabis cultivator, processor, and dispensary operator. GTI has 89 retail locations in the United States and is currently operating Naperville's only medical cannabis dispensary, 3C Compassionate Care Center, which is located on Quincy Avenue and zoned I (Industrial). Should the City allow the sale of adult-use cannabis, GTI intends to operate medicinal

as well as adult-use at its Quincy Avenue location and potentially expand to an additional retail location.

Grassroots Cannabis (GR Companies, Inc.) is a Chicago-based cannabis company with licenses to cultivate, process, and dispense medical cannabis in 12 states. GR Companies would like to locate on Route 59 should the City allow the sale of adult-use cannabis.

### **DISCUSSION:**

The CRTA makes existing medical cannabis dispensaries eligible for “early approval” adult-use dispensary licensing meaning that only existing medical dispensaries will be able to engage in retail sales as of January 1, 2020. Future dispensary licenses are expected to be issued by the state to non-medical license holders beginning in mid-2020.

Existing medical cannabis dispensary license holders are eligible for “early approval” adult-use dispensary licensing at their existing medical dispensary locations as well as at one additional, new retail location within their designated state district. Currently, there are 55 medical cannabis dispensary license holders in Illinois, including one in Naperville (3C Compassionate Care Center). If each of the existing medical dispensaries obtained adult-use licenses and opened a second location there is a maximum potential of 110 adult-use dispensary licensing locations state-wide that could be eligible to engage in the retail sale of adult-use cannabis as of January 1, 2020.

As stated above, two cannabis dispensary businesses have asked for approval to engage in the retail sale of adult-use cannabis in Naperville. GTI is interested in engaging in the retail sale of adult-use cannabis from its existing medical dispensary location in Naperville as well as from a second, yet to be determined location. Grassroots Cannabis has medical dispensary locations in Deerfield, Mokena, Litchfield, and Morris and is interested in engaging in the retail sale of adult-use cannabis from one (or more) of its eligible new, secondary locations somewhere in Naperville (specific location yet to be determined).

### **Zoning**

Should City Council determine that the City will permit the sale of adult-use cannabis within the City’s corporate limits, the Zoning Code will need to be amended to reflect the requirements under which these retail operations will be permitted to locate. The City’s existing medical cannabis ordinance, which includes specifics regarding permitted/conditional zoning districts for dispensaries, as well as separation requirements from residential and schools, can be expanded to apply to adult-use cannabis dispensaries. If desired, this ordinance can also include additional zoning restrictions specific to adult-use dispensaries, such as a cap on the total number of dispensaries permitted within the City.

Following City Council direction regarding the zoning requirements for such facilities, an amendment to the City’s zoning code will be drafted by staff for review by the Planning and Zoning Commission through a public hearing, followed by City Council consideration of the ordinance. The overall amendment timeline will be roughly three to four months.

### **Immediate Action**

At this early stage, the petitioners are seeking an indication from Council regarding whether Naperville will allow the retail sale of adult-use cannabis within its jurisdiction. If Council is uncertain whether to opt-in to the retail sale of adult-use cannabis or if Council wants to wait longer before deciding whether to opt-in it is recommended that that Council consider opting-out until it is ready to

opt-in rather than opt-in and then later decide to opt-out after businesses have invested resources in local adult-use dispensaries.

One risk of opting-out, or waiting to opt-in, may be that other municipalities will opt-in quickly and attract the limited number of eligible dispensary licenses and, with them, the corresponding tax revenues.

The recommended options for Council's consideration are to direct staff to begin the process of:

- Amending the zoning code to allow the City to consider allowing the local retail sale of adult-use cannabis (Option 1);
- Preparing necessary documentation for the City to consider opting out of allowing the local retail sale of adult-use cannabis (Option 2); or
- Administering a community engagement survey on the topic of whether to allow the local retail sale of adult-use cannabis and report findings at a future meeting (Option 3).

### **Future Action**

Separate from Council's decision concerning whether to allow the retail sale of adult-use cannabis, staff will simultaneously be preparing necessary text amendments to the municipal code repealing conflicting ordinances that prohibit adult cannabis possession and use and adding new ordinances to allow local enforcement of cannabis possession and public consumption consistent with the CRTA. Those ordinances will be provided for Council consideration prior to January 1, 2020.

Additionally, staff will work internally to comply with other provisions of the CRTA concerning employee policies and criminal record expungements, as well as developing police training and best practices.

### **FISCAL IMPACT:**

Municipalities may enact up to a 3% tax on gross sales of adult-use cannabis as well as a corresponding increase in revenues from the City's home rule sales tax (0.75%) and the local government portion of the state sales tax (20% of the 6.25% state sales tax).