



## Legislation Details (With Text)

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<b>Title:</b>	Conduct the first reading of an ordinance amending Title 3 of the Naperville Municipal Code by the addition of Chapter 17 prohibiting adult use cannabis business establishments other than medical cannabis cultivation centers and medical cannabis dispensing organizations		
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Date	Ver.	Action By	Action	Result
8/20/2019	1	City Council	conduct the first reading	

### CITY COUNCIL AGENDA ITEM

#### **ACTION REQUESTED:**

Conduct the first reading of an ordinance amending Title 3 of the Naperville Municipal Code by the addition of Chapter 17 prohibiting adult use cannabis business establishments other than medical cannabis cultivation centers and medical cannabis dispensing organizations

**DEPARTMENT:** Legal Department

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

#### **BOARD/COMMISSION REVIEW:**

At the July 16, 2019 City Council meeting, Council considered Grassroots Cannabis and Green Thumb Industries' request to begin operating adult use cannabis dispensaries in the City of Naperville as soon as January 1, 2020. The petitioners made presentations to Council and approximately 15 speakers also provided testimony. After approximately 2.5 hours of discussion, Council voted 5-4 to direct staff to bring back to Council an ordinance prohibiting the local retail sale of adult use cannabis.

#### **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.

The State of Illinois reports that since enactment of the first medical marijuana law in Illinois in 2013, more than 80,000 patients across the state have received authority to use marijuana to treat certain medical conditions

On August 12, 2019, the State of Illinois expanded the state's medical marijuana program through the adoption of several new bills that, in part:

- Make permanent the medical cannabis pilot program, which was scheduled to sunset next year;
- Add 11 conditions for which a person may use medical cannabis, including autism, chronic pain, migraines, osteoarthritis and anorexia nervosa;
- Allows qualifying veterans access to medical marijuana as part of an Opioid Alternative Pilot Program;
- Expands the list of medical professionals who can certify patients to use medical marijuana beyond medical doctors to include advance practice registered nurses and physician assistants; and
- Gives qualifying students more options for taking the drug at school and requires schools to allow a school nurse or administrator to administer cannabis-infused products to a student who is a registered qualifying patient.

### **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 only for medical cannabis program participants, and 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 prohibit (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.

If City Council decided not to opt-out of any of adult use cannabis businesses, the Zoning Code would need to be amended to reflect the requirements under which said businesses 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, could be expanded to apply to adult use cannabis businesses. If desired, such an ordinance could also include additional zoning restrictions specific to adult use cannabis businesses, such as a cap on the total number of dispensaries permitted within the City.

If City Council directed the establishment of zoning requirements for adult use cannabis businesses, an amendment to the City's zoning code would 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 zoning amendment timeline would be roughly three to four months.

### **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.

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).

## **DISCUSSION:**

### **July 16, 2019 City Council Direction**

At the July 16, 2019 City Council meeting, Council direct staff to bring back to Council an ordinance prohibiting the local retail sale of adult use cannabis.

### **Ordinance**

The City has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and that protect the public health, safety and welfare of its citizens. The CRTA, authorizes local units of government to prohibit the location of adult use cannabis business establishments within their jurisdiction.

Attached to this agenda item is an ordinance that amends the Naperville Municipal Code by adding a chapter that prohibits adult use cannabis business establishments other than medical cannabis cultivation centers and medical cannabis dispensing organizations. Cannabis business establishments include: adult use cannabis cultivation centers, adult use cannabis craft growers, adult use cannabis processing organizations, adult use cannabis dispensing organizations, and adult use cannabis transporting organizations.

The proposed ordinance prohibits all local adult use cannabis businesses other than medical cannabis businesses. To date, the City has only been approached by businesses interested in opening local adult use cannabis dispensaries to engage in the local retail sale, but it is recommended that any opt-out ordinance passed by the City take a comprehensive approach prohibiting cultivation centers, craft growers, processing organizations, and transporting organizations, in addition to dispensing organizations so that the City may maintain maximum legislative oversight. If the ordinance is passed as proposed, the City Council may consider amending the ordinance in the future to allow certain adult use cannabis businesses if Council determines such action appropriate upon the request of a petitioner.

The attached ordinance is based on the model ordinance prepared by the Illinois Municipal League which is recommended to local governments for opting-out of allowing local adult use cannabis business establishments. Generally, it is advisable to follow Illinois Municipal League's model ordinance because it creates uniformity throughout the state and if the model ordinance is challenged any court decisions can be universally applied. Likewise, Illinois Municipal League's has a practice of assisting municipalities with challenges to its model ordinance.

### **Additional Information**

Staff has received many questions and requests for information from Council members concerning adult use cannabis and staff has been monitoring activity in other Illinois communities regarding this issue. Attached to this agenda item is a list of said questions, responses, and additional information for Council's consideration.

### **Future Action**

Separate from Council's consideration of the ordinance prohibiting local adult use cannabis business establishments, staff is preparing necessary text amendments to the municipal code repealing ordinances conflicting with the CRTA 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 (1%).