



## Legislation Text

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File #: 19-844, Version: 1

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### CITY COUNCIL AGENDA ITEM

#### **ACTION REQUESTED:**

Option 1: Pass the 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;

Option 2: Direct staff to proceed with plan to establish zoning for local adult use cannabis business establishments

**DEPARTMENT:** Legal Department

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

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

N/A

#### **BACKGROUND:**

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

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.

##### **August 20, 2019 City Council Direction**

At the August 20, 2019 City Council meeting, Council held the first reading of an ordinance amending the Naperville Municipal Code to prohibit adult use cannabis business establishments other than medical cannabis cultivation centers and medical cannabis dispensing organizations. The petitioner, GTI, made a presentation to Council and approximately 20 speakers also provided testimony. After approximately two hours of discussion, Council directed staff to bring back to Council two options for consideration: (1) the ordinance prohibiting local adult use cannabis business establishments; and (2) a plan to establish zoning for local adult use cannabis business establishments. Council also recommended that staff contact Naperville school districts 203 and 204 as well as North Central College to invite them to share input regarding the City permitting local adult use cannabis businesses.

#### **DISCUSSION:**

### **Local Educational Institution Input**

Staff invited Naperville school districts 203 and 204 as well as North Central College to share input regarding the City permitting local adult use cannabis businesses. Staff received the attached responses from the three educational institutions.

### **OPTION 1: Ordinance Prohibiting Adult Use Cannabis Business Establishments**

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 Illinois Cannabis Regulation and Tax Act ("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.

### **OPTION 2: Establish Zoning for Adult Use Cannabis Business Establishments**

Should the City Council opt to permit local adult use cannabis businesses, the Zoning Code will need to be amended to incorporate new regulations specific to this use. As a first step, staff will seek City Council input (see potential discussion topics below) regarding the framework for the proposed zoning regulations. To guide this discussion, staff will use the City's existing Medical Cannabis regulations as a baseline, as well as best practices from the Illinois Municipal League model ordinance and the State's permissible additional regulations.

Following City Council input regarding the framework for adult use cannabis zoning, staff will draft ordinance language for presentation to the Planning and Zoning Commission (PZC) at a public hearing. Notice of the public hearing will be published in a newspaper not less than three times with at least one publication being not more than 30 and not less than 15 days prior to this public hearing. At the PZC public hearing, testimony will be taken on the proposed zoning regulations. The PZC will

not debate the merits of opting-in versus opting-out, but will focus its review on the proposed zoning regulations and the extent to which they achieve the intended goals established by the City Council. After the PZC public hearing (which may take one or multiple meetings), the PZC will make a recommendation on the proposed adult use cannabis zoning regulations. Following the PZC's recommendation, the ordinance will be finalized and presented to the City Council for a first reading and then return to a subsequent meeting for final action.

The formal review of the proposed ordinance through the PZC and the City Council is expected to take a minimum of approximately two to three months. This process would begin after City Council direction is provided on the ordinance components and City staff drafts the proposed ordinance accordingly.

### Discussion Topics for Opt-In Zoning

*Attached is a document that provides definitions for key terms used below  
(zoning district classifications and types of cannabis businesses)*

| <b><i>Provide guidance on the following adult use cannabis components in Naperville:</i></b>   |                      |                       |                      |
|--|----------------------|-----------------------|----------------------|
| <b>CANNABIS BUSINESS</b>   | <b><u>OPPOSE</u></b> | <b><u>SUPPORT</u></b> | <b><u>CAP</u></b>    |
| Cultivation Centers  |                      |                       |                      |
| Dispensing Organization  |                      |                       |                      |
| Craft Growers*   |                      |                       |                      |
| Processing Organization  |                      |                       |                      |
| Transporting Organization  |                      |                       |                      |
| On-Site Consumption<br><i>(cannabis businesses)</i>  |                      |                       |                      |
| <b><u>TAX</u></b>  | <b><u>OPPOSE</u></b> | <b><u>SUPPORT</u></b> | <b><u>AMOUNT</u></b> |
| Local Cannabis Tax (N<br>¼% increments)  |                      |                       |                      |
| *These facilities do not currently have an equivalent category in the existing medical cannabis ordinance. More of the asterisked categories in the adult use cannabis ordinance, new baseline zoning regulations will |                      |                       |                      |

| <b><i>Should existing <u>medical</u> cannabis zoning regulations be applied to <u>adult use</u> cannabis:</i></b> |                     |                                 |                                 |
|---|---------------------|---------------------------------|---------------------------------|
| <b>Current Medical Cannabis</b>   | <b><u>Same?</u></b> | <b><u>More Restrictive?</u></b> | <b><u>Less Restrictive?</u></b> |
| Cultivation Centers <i>Conc</i><br>in RD, ORI, I  |                     |                                 |                                 |
| Dispensing Organization<br>Uses in B2, B3, and HS   |                     |                                 |                                 |
| Dispensing Organization<br>by right in RD, ORI, I   |                     |                                 |                                 |
| Dispensing Organization<br>within 250' of any property<br>used for residential                                    |                     |                                 |                                 |

|  |  |  |  |
|--|--|--|--|
| <b>Dispensing Organization</b><br>within 1,000 feet of a pre-existing school or daycare  |  |  |  |
| <b>Dispensing Organization</b><br>Drive-through facilities prohibited  |  |  |  |
| <b>Dispensing Organization</b><br>sales limited to 10% of the footprint of the unit  |  |  |  |
| *As noted above, there are no equivalent zoning categories in the existing medical cannabis ordinance for organizations, or on-site consumption at cannabis business establishments. Should City Council support an adult use cannabis ordinance, new baseline zoning regulations would need to be considered. |  |  |  |

**FISCAL IMPACT:**

Municipalities may enact up to a 3% tax on gross sales of adult use cannabis. There would be 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). According to the CRTA, a local ordinance imposing the local adult use cannabis tax filed with the Illinois Department of Revenue on or before the first day of June, shall be administered and enforced as of the first day of September next following the adoption and filing.