



## Legislation Text

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File #: 20-784C, Version: 1

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### CITY COUNCIL AGENDA ITEM

#### **ACTION REQUESTED:**

Pass the ordinance repealing Chapter 17 (Cannabis Business Establishments Prohibited) of Title 3 (Business and License Regulations) and amending various Chapters of Title 6 (Zoning Ordinance) related to Cannabis Facilities - PZC 20-1-053.

**DEPARTMENT:** Transportation, Engineering and Development

**SUBMITTED BY:** Allison Laff, AICP, Deputy Director; Pat Lord, Senior Assistant City Attorney

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

The PZC conducted a public hearing on the proposed text amendment on July 15, 2020. At the conclusion of public testimony and discussion, the PZC voted to recommend approval of the amendment, as proposed, including a 250' separation distance between a residentially-zoned property and a dispensary, amended hours of operation for a dispensary, and a required traffic control plan (approved; vote 7-2).

#### **BACKGROUND:**

##### ***Medical Cannabis Regulations***

In 2013, the State of Illinois enacted the Compassionate Use of Medical Cannabis Pilot Program Act which became effective on January 1, 2014. Per the adopted act, the cultivation and dispensing of medical marijuana for use in serious diseases became permitted in all municipalities, subject to the limitations of the Act. While municipalities were not permitted to opt-out of having these facilities in their city, they were permitted to adopt stricter zoning regulations than those provided in the Act.

The City adopted zoning regulations for medical cannabis facilities in December 2013 (attached). In addition to the location requirements specified by the State of Illinois, the City added an additional 250 foot separation requirement between these facilities and residential properties. Since the State's regulations only noted that a dispensing organization cannot be located on residential property, this local regulation exceeded State requirements.

For reference, the City currently has one medical cannabis dispensing facility (known as GTI) located on an industrial-zoned property on Quincy Avenue. GTI has informed the City that it will seek approval to co-locate an adult-use cannabis operation at the same location when the zoning is established to do so.

##### ***Adult-Use Cannabis***

The Cannabis Regulation and Tax Act (CRTA), legalizing and regulating the production, consumption and sale of recreational cannabis in Illinois (also known as "adult-use cannabis"), took effect on January 1, 2020. The CRTA allows adults over the age of 21 to possess and privately use

recreational cannabis in limited quantities in Illinois. In the same Act, the state legislature also established six types of cannabis businesses.

While cities cannot prohibit members of the public from using or possessing cannabis within city limits (so long as such use and possession is within the parameters of the CRTA), cities have been granted the ability, through their zoning authority, to regulate or prohibit the location of cannabis businesses within city limits. This is unlike the 2013 Medical Cannabis Pilot Program Act which did not allow cities to prohibit medical cannabis facilities in their municipality.

The CRTA also removed the prior medical cannabis zoning requirement that a cannabis dispensing organization cannot be located within 1,000 feet of any pre-existing schools and daycares. Accordingly, this separation distance can be kept in the proposed zoning ordinance, or it can be amended or removed altogether.

### ***Naperville Adult-Use Cannabis Discussions***

The City of Naperville hosted several discussions between July and September 2019 as to whether adult-use cannabis dispensing facilities should be permitted within Naperville city limits. Over 400 members of the public spoke on this topic over multiple meetings before the City Council. Speakers offered both positions in support and against local adult-use cannabis dispensing facilities.

Prior to proceeding with a final decision to locally opt-in or opt-out, the City Council elected to have an advisory referendum asking whether Naperville should allow the sale of adult-use cannabis within City limits (see referendum question below). This referendum question was added to the March 17, 2020 ballot.

*Shall the City of Naperville, in light of state legislation legalizing the possession, consumption, and sale of recreational adult use cannabis, allow the sale of recreational adult use cannabis within its jurisdiction?*

Because the referendum question would be asked after the January 1, 2020 date that adult-use cannabis facilities would become legal in Illinois, the City Council passed an ordinance on September 3, 2019 opting out of having any local adult-use cannabis facilities pending the outcome of the March 17 referendum question.

Based on a majority of votes being cast in support of allowing the sale of recreational adult use cannabis within the City through the March 17 referendum, City Council directed staff to begin the process of creating zoning regulations for adult-use cannabis facilities.

### **DISCUSSION:**

#### ***City Council Workshop***

The first step in creating zoning regulations for adult-use cannabis facilities was the June 22, 2020 City Council workshop. In advance of the workshop, staff created a webpage, video presentation, and non-binding survey which were released to the public on June 3, 2020.

At the June 22, 2020 workshop, City Council provided guidance as to how the existing medical cannabis regulations should be applied to the adult-use cannabis cultivation centers and dispensing organizations, as depicted below.

*What did Council recommend for Adult Use Cannabis?*

Current Medical Cannabis Zoning	Keep it the Same	Make it more restrictive	Make it less Restrictive
<b>Cultivation Centers</b> - require a conditional use in Industrial Districts	✗		
<b>Dispensing Organizations</b> - require a conditional use in Commercial Districts and the Health Services District			✗
<b>Dispensing Organizations</b> - allow as a permitted use in Industrial Districts	✗		
<b>Dispensing Organizations</b> prohibit from being located within 250' of residential property	TO BE REVIEWED BY THE PZC		
<b>Dispensing Organizations</b> - prohibit from being located within 1,000' of pre-existing schools or daycares			✗
<b>Dispensing Organizations</b> - limit retail sales to 10% of total sq.ft. of unit			✗

For those items marked “make it less restrictive”, Council provided the following input:

- While medical dispensaries currently require a conditional use in the B2, B3, and HS Districts, City Council members noted their preference that these facilities (either medical or adult-use) be permitted by right in the commercial zoning districts, subject to compliance with all other cannabis ordinance requirements.
- City Council discussed the appropriate separation distance requirement between dispensaries and residential uses. At the conclusion of their discussion, City Council directed staff to prepare 3 maps for review by the Planning and Zoning Commission (attached). City Council noted that the ideal map will provide for the most separation distance between a dispensary and a residentially zoned property, while still allowing for an adequate number of eligible properties in which a dispensary could be located.
  - o Map 1: 0' separation distance between residential zoning and a dispensary
  - o Map 2: 250' separation distance between residential zoning and a dispensary
  - o Map 3: 1000' separation distance between residential zoning and a dispensary
- With respect to separation distance between dispensaries and schools, City Council noted that day care facilities should not be included in this restriction. Unlike primary and secondary schools, day cares are often located within non-residential zoning districts and therefore can inadvertently limit eligible dispensary locations within commercial and industrial districts.
- City Council did not express any specific concerns regarding the need to continue limiting retail sales within dispensary facilities; accordingly, this restriction has been removed from the draft ordinance.

City Council discussed the six new cannabis business types introduced through the CRTA and indicated their support for only adult-use dispensaries (note: medical cultivation centers will continue to be permitted per the Medical Act). In addition, City Council reached consensus that a maximum of

3 adult-use dispensaries should be permitted to locate in Naperville's corporate limits.

*Consensus from the June 22<sup>nd</sup> City Council Workshop*

Cannabis Businesses	OPPOSE	SUPPORT	CAP
Adult Use Cultivation Centers	✗		
Dispensing Organizations		✗ Per Referendum	3
Craft Growers	✗		
Processing Organizations	✗		
Transporting Organizations	✗		
Infuser Organizations	✗		
On-Site Consumption	✗		

### **Parking Requirements**

Staff researched the parking requirements utilized by existing cannabis facilities located through the United States (Colorado, Michigan, Washington), as well as regulations recently established for 19 Illinois opt-in communities (Aurora, Geneva, Joliet, Lombard, Schaumburg, etc.). Based on this research, most communities require cannabis dispensaries to be parked at a retail rate (with regulations ranging from 3 parking spaces/1,000 square feet to 5 parking spaces/1,000 square feet). However, best practices research also shows that this level of parking tends to be insufficient for cannabis dispensing facilities, particularly during demand surges that occur in their first year of operation.

Based on the overall research collected, staff is recommending the following requirements for cannabis dispensaries:

- For those dispensaries that will be located in a larger shopping center or industrial campus in which shared parking is available: 6 parking spaces per 1,000 square feet of gross floor area of the dispensary
- For those dispensaries that are located on a property in which no shared parking is available: 7.5 parking spaces per 1,000 square feet of gross floor area of the dispensary
- In addition to the required parking, the dispensary will be required to submit a parking plan,

subject to review and approval by the Zoning Administrator that denotes additional parking supply (including off-site) which can be used to meet the increased parking demands of the dispensary upon its initial opening. This additional parking will be required to be maintained for a specific period determined by the Zoning Administrator.

Staff finds that the above recommendations will allow for required parking beyond that of a typical retail facility (4.5 parking spaces/1,000 square feet), as has been found to be necessary by other communities. Additionally, the parking plan will allow for the increased parking demands of a newly opened dispensary to be adequately accounted for and accommodated.

### ***PZC Review***

Staff presented an amendment to Title 6 (Zoning Ordinance) reflecting the direction provided by the City Council at the June 22, 2020 workshop. This ordinance also included a minimum separation distance of 1,500 feet between dispensaries, as required by the CRTA, as well as new parking requirements specific to dispensary facilities.

The PZC conducted the public hearing regarding the proposed cannabis facilities amendments on July 15, 2020. At this meeting, staff read 11 written comments that were submitted through the online speaker sign-up form into the record; 6 speakers also provided testimony at the meeting. At the conclusion of the testimony, the PZC recommended approval of the amendment, as presented, with the following additions (approved; 7-2):

- A minimum separation distance of 250' between a dispensary and a residentially-zoned property;
- A recommendation to limit the allowable hours of operation of a dispensary to 9 a.m. to 7 p.m., Monday through Sunday (note: the CRTA currently permits dispensary hours to be 6 a.m. to 10 p.m., Monday through Sunday).\*
- A recommendation to require the submittal of a traffic management plan for any dispensary proposed.

The PZC also discussed, but did not reach consensus on, increasing the minimum separation distance between dispensaries and requiring a conditional use for dispensaries. Commissioners Hanson and Bansal cast the two dissenting votes on the proposed amendment due to the dispensaries being permitted by right and a desire to obtain more details (i.e., what impact would a 500' separation distance between residential and dispensaries have?) before making a recommendation.

It should be noted that during discussion, the PZC raised concerns that the maps presented depict the commercial/industrial building located on 5<sup>th</sup> Avenue directly south of Naperville North High School as being an eligible dispensary location. Upon further review of the maps, staff determined that the athletic fields owned by Naperville North (but located on a separate lot) were not included in 1,000' school buffer. Upon updating these maps to include the athletic fields, the subject commercial/industrial building is no longer shown as an eligible dispensary location. Please note that any proposed dispensary can use the City's maps as a starting point to find eligible properties; however, said dispensary will be required to independently demonstrate their compliance with all zoning requirements with submittal of their application.

### ***Hours of Operation\****

Based on the PZC's recommendation, staff reviewed the provisions of the CRTA, the hours of

operation established by various Illinois communities through their local cannabis ordinances, and the actual hours of operation being utilized by Illinois cannabis dispensaries. Based upon the information obtained, Council may choose to reasonably limit the dispensary hours of operation per day; however, in no event can Council eliminate an operational day (i.e., Monday - Sunday), as these days are all permitted by the CRTA.

It should be noted that based on a review of the hours of operation of Illinois dispensaries, it appears that most dispensaries voluntarily opt to offer lesser hours of operation than permitted by the CRTA based on operational concerns and supply constraints. Further, as mentioned by the PZC, further limiting the hours of operation could have an unintended impact on traffic at the dispensary. For example, if the permitted morning hours are reduced, vehicle trips to the dispensary would be eliminated during a time period in which traffic congestion is not typically high. These trips may, however, be added during peak congestion hours later in the day.

### ***Ordinance for CC Review***

A summary of the Cannabis Facilities ordinance was presented to the City Council for a first reading is as follows:

- Chapter 17 (Cannabis Business Establishments Prohibited) of Title 3 (Business and License Regulations) will be deleted in its entirety. This Chapter was adopted by the City Council on September 3, 2019 pending the outcome of the March 2020 referendum.
- Section 6-2-32 (Cannabis Facilities) will provide regulations for both medical and adult-use cannabis facilities.
- Medical Cultivation Centers will continue to require a conditional use in the I, ORI, and RD Districts.
- Dispensaries (medical and/or adult-use) will be permitted by right in B2, B3, HS, I, ORI and RD.
- A 1,000 foot separation distance will be required between dispensaries and primary/secondary schools; day care facilities are excluded from this restriction.
- A 250 foot separation distance will be required between dispensaries and residentially zoned property.
- A maximum of 3 medical and/or adult-use dispensaries will be permitted within the Naperville corporate limits.
- Dispensaries cannot be located within 1,500' of another existing dispensary.
- A list of documents and information to be submitted to the City regarding proposed Cannabis Facilities has been added to the Code.
- New parking requirements for dispensaries have been added, as well as the required submittal of a parking plan and traffic management plan.
- Provisions have been included to allow the Naperville Police Department to enforce state and local regulations against dispensaries in the form of issuing violation citations and prosecuting them in court where monetary penalties may be assessed. While the City does not have the authority to suspend or revoke a dispensary's ability to operate (licensing can only be done by the State), the City can report any dispensary violations to the State for their appropriate action against the dispensary's license.

### ***Ordinance First Reading***

City Council held the first reading of the proposed Cannabis Facilities ordinance on August 4, 2020. Following the comments read into the record and public testimony provided, the City Council discussed various components of the proposed ordinance, including the proposed distance

separation requirement between dispensing facilities. At the conclusion of the discussion, no specific modifications to the proposed ordinance were directed to staff.

Should City Council wish to amend the separation distance between dispensaries, this change may be done from the dais on August 18<sup>th</sup> using the following motion: "Pass the ordinance repealing Chapter 17 (Cannabis Business Establishments Prohibited) of Title 3 (Business and License Regulations) and amending various Chapters of Title 6 (Zoning Ordinance) related to Cannabis Facilities with an amendment to Section 6-2-32:3.3 to increase the required separation distance between dispensaries from 1,500 feet to X feet".

**FISCAL IMPACT:**

Tax revenue will be generated by any adult-use cannabis dispensing facilities that are opened within the City limits.