

TO: Batavia Plan Commission

FROM: Drew Rackow AICP, Planner

DATE: December 10, 2020

RE: **Public Hearing:** Amending the Text of the Zoning Code for Cannabis Dispensaries and Related Uses

- 2.3 Commercial Districts
 - 2.4, Downtown Mixed-Use District
 - 2.5 Mixed Use District
 - 2.6 Employment Districts
 - 4.1 Site Regulations
 - 4.2 Off-Street Parking and Loading Regulations
 - 4.4 Sign Regulations
 - 4.5 Supplemental Use Regulations
 - 5.1 Planning Administration
 - 5.2 Common Procedures
 - 6 Glossary.
- City of Batavia, Applicant

Background: The Batavia City Council placed an advisory referendum on the November 3rd general election ballot seeking to determine the level of support for such a use within the city of Batavia. The referendum question was posed as:

Shall the City of Batavia allow the sale of recreational adult-use cannabis within its jurisdiction, subject to statutorily permissible restrictions?

9,853 (63.05) of voters selected “Yes” to 5,774 (36.95) who selected “No”. 81.49% of registered voters in Batavia cast a vote on this ballot item.

At the November 10th Committee of the Whole (COW) meeting, the Committee provided direction to staff to initiate a Public Hearing process and draft regulations for Recreational Cannabis Dispensaries with the intention of having a finalized Ordinance prior to the anticipated next round of state licenses in 2021 (the exact date of this next round has not yet been determined). The COW spoke broadly about which zoning districts could include the use but did not provide specific direction for Plan Commission consideration of any specific zoning districts. The COW indicated that did not want to recommend to the any specific number of dispensaries. They expressed their preference that all Recreational Cannabis Dispensaries be subject to Conditional Use approval. There was a stated preference for some buffers from certain uses. Staff has prepared draft language, based on our recommendations, for the Plan Commission to consider in preparing its recommendations to the COW.

Police Chief Eul has provided the Committee of the Whole his observations as part of a discussion of the use to occur at the December 15th COW meeting. The memo is available online at: <http://cityofbatavia.net/AgendaCenter/ViewFile/Item/15924?fileID=12069>.

Several Chapters were included in the Legal Notice in case through the course of the Public Hearing it is determined that the proposed uses should be allowed in additional districts than those included in the draft changes, or the Plan Commission or City Council requested additional changes that affected these chapters.

Summary of Information and Analysis:

With the adoption of Medical Dispensary requirements in 2013 and for production and processing uses earlier this year, several aspects of cannabis regulation are already in place. The staff-proposed changes would add Recreational Dispensaries into several districts. It would also centralize additional regulations for Cannabis Business Establishments to Chapter 4.5. Lastly Parking standards would be added for Cannabis Business Establishment Uses. Attached to this report are summaries of other jurisdiction's regulations for review of the Commission.

The State Cannabis Regulation and Tax Act ([Public Act 101-0027](#)) already regulates many aspects of Cannabis dispensaries. Those include:

- Hours of Operation: 6 AM – 10 PM
- No drive-through service
- No vending machines
- No direct delivery of cannabis to customer
- All products are to be packaged with the name of the dispensing organization, contents and cannabis weight and amount of THC in milligrams
- Prohibits sales when video surveillance, point of sale equipment or the state electronic verification systems are inoperable
- Dispensaries must be a minimum of 1,500 feet from another dispensary.
- State law language includes language that prohibit landscaping and lighting that impact surveillance of the property. (a site must be well lit, and landscape cannot block the ability to see persons concealing themselves outside the premises).

Additional information can be found in the Illinois Municipal League's Frequently Asked Question document (accessible at: <https://legislative.impl.org/file.cfm?key=16586>). This document may also answer potential questions regarding law enforcement matters, and other broader questions that may be of interest to Commissioners regarding this topic. The City can impose zoning regulations in addition to these regulations.

Proposed Districts for Recreational Cannabis Dispensaries: Generally, staff proposes allowing this use in Districts where a Medical Cannabis dispensary may locate, with some exceptions (as noted below).

Commercial Districts: Staff proposes that this use be a Conditional Use in the GC District. Staff feels that the use may be incompatible with the CC and NC, Neighborhood Commercial District. Sites in the CC and NC District generally have more limited off-street parking availability and are in closer proximity to Single Family Residential Districts.

Downtown Mixed-Use District: Staff proposes that this use is not allowed in the Downtown Mixed-Use District. This chapter was included in the Public Hearing Notice to allow for consideration of the use in

this district. However, the District is essentially removed from eligibility due to the state's location requirements. The Commission may consider whether it should be added to this District.

Mixed Use District: Staff proposes that this use is not allowed in the Mixed-Use District. This chapter was included in the Public Hearing Notice to allow for consideration of the use in this district. The Commission may consider whether it should be added to this District.

Employment Districts: Medical Cannabis dispensaries are not currently allowed in these districts. Staff does not propose free-standing dispensaries in these Districts. Instead, staff proposes that Recreational Cannabis Dispensaries only be permitted as a conditional use when associated with a Craft Grower or Cultivation Center in the LI and GI Districts. Staff also proposes relocating language from Section 2.605.H to a rewritten Section 4.515, as some of the regulations that were originally drafted for these uses will be applicable to dispensaries, either as a result of the Conditional Use process or Citywide application of requirements such as prohibitions for on-site consumption.

Parking: Parking requirements vary slightly among Municipal Ordinances surveyed. Aurora regulates parking standards with the same broader categories of the uses (dispensaries being a retail use, production uses being industrial, etc.). Geneva applies a parking rate of 4 per 1,000 sf (1 per 250 sf) for both medical and recreational dispensaries. St. Charles allows a lesser parking rate of 3 per 1,000 sf (1 per 333 sf) for medical dispensaries and 4 per 1,000 sf for recreational dispensaries. 4 per 1,000 sf matches our existing ratio for retail sales. Staff proposes modifying our current Medical Cannabis Dispensary rate to 1 per 300, with a rate of 1 per 250 for Recreational Cannabis. Both entries on the Parking requirement Table enable the Plan Commission to require additional parking through a Conditional Use review. Staff proposes adding requirements, with similar provisions for other cannabis related uses. These would be reflective of existing industrial requirements for warehousing vs production areas but allow the Commission to impose additional parking with their review.

Staff proposes relocating the bulk of regulations regarding Cannabis Business establishments to one section in the Zoning Code, so that information does not need to be repeated. Staff proposes relocating (from 2.605.H) and adding additional regulations to Chapter 4.515, which currently contains regulations specific to dispensaries. The City Council expressed a preference to follow state statute, but discussion included proposing some buffers. State statute requires only one buffer - a 1,500-foot separation from other Cannabis Dispensaries. The State Act includes a 1,000 feet separation from any advertising from school grounds, a playground, recreation center or facility, a childcare center, a public park or public library, or a game arcade which admission is not restricted to persons 21 years of age or older (eg. Funway). Staff has included a map that shows a 500-foot separation (buffers in the draft language) and 1,000 separation from these uses. The Commission can choose different buffers or alternative buffers for consideration. Most nearby municipalities have selected a range of buffers. Almost all provide some buffer from schools ranging from 150-750 feet. Some also choose to buffer from residential areas, parks, and other uses. The Commission may consider adding setbacks from other uses or decreasing/increasing these setbacks as currently drafted.

There are additional areas where other municipalities have chosen to regulate these uses. The Commission may consider these or other regulations as possible recommendations to the City Council. Staff does not make any specific recommendation for these.

Experience: Aurora requires an applicant have two years dispensing cannabis either as a medical dispensary in the state of Illinois or as a recreational dispensary in another state. St. Charles included a

requirement that an applicant have at least one year of experience dispensing cannabis in the State of Illinois or dispensing Medical Cannabis in the City of St. Charles.

Hours of Operation: Hours of Operation requirements have varied slightly from each municipality that staff has reviewed. The current draft language includes the existing limitation for Medical Dispensaries that limits hours of operation to between 9:00 AM to 9:00 PM. Aurora and Geneva allow opening at 8 AM, but Geneva requires an earlier closing of 8 PM. Aurora allows later closing time of 10 PM. The Plan Commission may consider keeping the existing regulation or recommend modifying the hours.

Number: Several municipalities have proposed caps on the number of dispensaries within a municipality. The most restrictive being Geneva with an allowance for one recreational and one medical dispensary within their community. Aurora allows up to four with two being reserved for Social Equity applicants. Social Equity applicants are defined under the State Act as being owned or having more than half of their full-time employees that either live in a designated impacted area for five of the past ten years or have been convicted of a cannabis related offense that qualifies under the act or have had a family member convicted. (A map is viewable at <https://www2.illinois.gov/dceo/CannabisEquity/Pages/default.aspx>). No areas of Batavia are denoted as a Designated Impacted Area. The City Council expressed that their preference was to not set a number limitation.

Staff provides these as initial recommendations for the Plan Commission to consider. There may be additional areas that the Commission would like to review, such as buffers that may require additional staff research or production of review materials. Public Hearing testimony and discussion may necessitate additional research.

Staff Recommendation: Staff recommends the Plan Commission open and conduct the Public Hearing for the Text Amendments. After receiving testimony, the Commission can continue the Hearing to allow for additional time for consideration or additional testimony. If the Commission feels it can make a recommendation to the City Council on the proposed amendments, the Commission can close the hearing and make a recommendation to the Committee of the Whole that may include changes to the attached draft amendments or as amended by the Commission.

Attachment: Draft Zoning Code Section Excerpts (redlined)
Examples of Other Jurisdictions Document
500 ft and 1000 Buffer Map

Cc: Mayor and City Council
Department Heads
Media