

City of Newport
Department of Planning and Economic Development
Staff Report to the Planning Board

Zoning Amendment

Meeting: November 30, 2020
Applicant: City of Newport
Petition: Update definitions within the zoning ordinance and permitted uses in the CI, GB, LB, and WB zones to prohibit retail marijuana

The State of Rhode Island is adding compassion center licenses and is on the brink of legalizing retail marijuana. While there are important distinctions between the two generally, given the uncertainty around eventual retail marijuana legalization, the two uses are presented as one in this petition. The City Council enacted a moratorium on retail marijuana earlier this year (Exhibit A). This moratorium expires in January and the City is eager to see a new ordinance enacted prior to the expiration of the moratorium. The Department believes, until further study, retail marijuana should not be permitted by right in business zones. An amendment to the zoning ordinance is needed to prohibit retail marijuana between the time the moratorium expires and the time of the adoption of an ordinance best determined to allow the use.

The proposed zoning amendment adds a definition of “marijuana retail facility” that encompasses current and proposed State law and adds to the description of “stores where good are sold or services are rendered primarily at retail” “but not including a marijuana retail facility.”

Standards of Review

Purposes of zoning

In making this finding of general consistency with the Comprehensive Plan, the Planning Board must recognize and consider the purposes of zoning, as presented in the Newport Zoning Ordinance, section 17.04.20 of the Newport Code of Ordinances, and Rhode Island General Law § 45-24-30:

(A) Promoting the public health, safety, and general welfare.

- While attitudes around marijuana use have shifted in recent years, the drug has well-known health and safety effects. One of the biggest concerns about limited state licenses around retail marijuana is traffic impact. Newport is plagued by traffic impacts on its narrow streets and any future retail marijuana in the city should be carefully sited with sufficient traffic management.

(B) Providing for a range of uses and intensities of use appropriate to the character of the city and reflect current and expected future needs.

- Due to the limited quantity of state licenses, retail marijuana is a very intense use. While locating a facility in Newport may save patrons the trip to Portsmouth, impacts in the vicinity of such a facility should be carefully studied.

(C) Providing for orderly growth and development which recognizes:

(1) The goals and patterns of land use contained in the comprehensive plan;

- The business zones are the only ones that allow retail activity, in line with historic development patterns of Newport. The Comprehensive Plan cites the need to manage traffic, and in particular, limit traffic in residential areas, throughout the document.

(2) The natural characteristics of the land, including its suitability for use based on soil characteristics, topography, and susceptibility to surface or groundwater pollution;

- More intense uses should be focused in the most intensely developed areas.

(3) The values and dynamic nature of coastal and freshwater ponds, the shoreline, and freshwater and coastal wetlands;

- Retail uses in Newport are tied to more developed areas to protect natural areas.

(4) The values of unique or valuable natural resources and features;

- Retail uses in Newport are tied to more developed areas to protect natural areas.

(5) The availability and capacity of existing and planned public and/or private services and facilities;

- The business zones are in the most intensely developed areas. Additional infrastructure investment is planned in these areas to successfully manage growth.

(6) The need to shape and balance urban and rural development; and

- Newport's stressed urban and rural areas are in need of sufficient protection from further degradation.

(7) The use of innovative development regulations and techniques.

- In developing an ordinance for retail marijuana use, a floating zone will be considered. In order for this innovative development technique to be successful, the use needs to be prohibited in the underlying zoning.

(D) Providing for the control, protection, and/or abatement of air, water, groundwater, and noise pollution, and soil erosion and sedimentation.

- The primary concern around pollution with retail marijuana is smoke and rubbish. Strong smoke and rubbish controls can be made part of the eventual ordinance.

(E) Providing for the protection of the natural, historic, cultural, and scenic character of the city or areas therein.

- This amendment improves protection of the natural, historic, cultural, and scenic character of the city.

(F) Providing for the preservation and promotion of agricultural production, forest, silviculture, aquaculture, timber resources, and open space.

- This amendment has no effect on the preservation and promotion of agricultural production, forest, silviculture, aquaculture, timber resources, and open space.

(G) Providing for the protection of public investment in transportation, water, stormwater management systems, sewage treatment and disposal, solid waste treatment and disposal, schools, recreation, public facilities, open space, and other public requirements.

- Limiting retail marijuana will allow for the protection of public investment in transportation, water, stormwater management systems, sewage treatment and disposal, solid waste treatment and disposal, schools, recreation, public facilities, open space, and other public requirements.

(H) Promoting a balance of housing choices, for all income levels and groups, to assure the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and sanitary housing.

- This amendment protects housing, which exists in all business zones.

(I) Providing opportunities for the establishment of low- and moderate-income housing.

- This amendment protects low-and moderate-income housing, which exists near all business zones.

(J) Promoting safety from fire, flood, and other natural or unnatural disasters.

- This amendment has no effect on promoting safety from fire, flood, or other natural or unnatural disasters.

(K) Promoting a high level of quality in design in the development of private and public facilities.

- Prohibiting retail marijuana promotes a high level of quality in the design of private and public facilities.

(L) Promoting implementation of the comprehensive plan of the city adopted pursuant to Title 45, Chapter 22.2 of the General Laws.

- See the general consistency with the Comprehensive Plan analysis, below.

(M) Providing for coordination of land uses with contiguous municipalities, other municipalities, the state, and other agencies, as appropriate, especially with regard to resources and facilities that extend beyond municipal boundaries or have a direct impact on that municipality.

- This amendment is made in line with state regulations and based on the policies of other municipalities in Rhode Island.

(N) Provide for efficient review of development proposals, to clarify and expedite the zoning approval process.

- This amendment provides for efficient review of proposals.

(O) Provide for procedures for the administration of the zoning ordinance, including, but not limited to, variances, special-use permits, and, where adopted, procedures for modifications.

- This amendment will allow retail marijuana with a use variance.

RIGL § 45-24-30 (16) Provide opportunities for reasonable accommodations in order to comply with the Rhode Island Fair Housing Practices Act, chapter 37 of title 34; the United States Fair Housing Amendments Act of 1988 (FHAA); the Rhode Island Civil Rights of Persons with Disabilities Act, chapter 87 of title 42; and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.

- The use variance process accommodates individuals with defined disabilities.

Required finding

General consistency of the proposal with the Comprehensive Plan including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan

Relevant goals, policies, and actions include:

Goal LU-1 – To provide a balanced city consisting of residential, commercial and employment uses consistent with the character, environmental resources and vision of the community

Policy LU-1.6 – The City shall encourage upgrading, beautification, revitalization, and environmentally appropriate reuse of existing commercial areas.

Policy LU-1.7 – The City shall protect the existing character of residential neighborhoods while encouraging local neighborhood business.

Action LU-1A – Update City's Zoning Ordinance to add Mixed Use designations compatible with the designations included in this Comprehensive Plan.

Goal ED-1 – To develop a robust and diverse economy, providing suitable employment opportunities for residents, and a stable tax base

Policy ED-1.1 – The City shall support key economic drivers while also seeking to attract and grow its technology sector and businesses that represent new and innovative concepts and technologies.

Policy ED-1.5 – The City shall build upon thriving sectors to develop ... a more substantial year-round tourism economy.

Goal ED-3 – To provide efficient and effective government services to encourage economic development.

Policy ED-3.1 – The City shall work with the State and advocate for City revenue options which provide a better return between the tax contributions provided by tourism in Newport with the tax revenues returned by the State to the City to pay for the services required to support the large tourism base.

Goal H-1 – To preserve and protect existing housing resources in the community.

Policy H-1.1 – *The City will support on-going programs to educate property owners of City plans, codes, standards and other applicable information.*

Policy H-1.2 – *The City shall make a priority the enforcement of code that relate to the protection of existing housing and neighborhoods.*

Goal T-1 – *To provide a comprehensive, multimodal transportation system for all users.*

Goal T-2 – *To link to the overall regional multi modal transportation network on Aquidneck Island.*

The limited number of retail marijuana licenses has created high demand at these locations with significant traffic impacts. Newport's high traffic volumes and narrow rights-of-way are unable to easily accommodate high-traffic activities. This matter should be further studied by the Planning Board before it is allowed within the city. Marijuana use has less of a public health impact than alcohol and even tobacco. If the City is going to follow the State in transitioning from black market use to a regulated use, it should think carefully about how to do so while best maintaining community character and maximizing economic development.

Planning Department Recommendations

The Department finds the proposal generally consistent with the Comprehensive Plan. The Department's recommendation is that the Planning Board forward a favorable recommendation to the City Council for the requested zoning amendment. A working group should be established in the new year to explore an ordinance that permits retail marijuana in certain areas.