

Recreational Marijuana White Paper

Problem Statement

Recreational marijuana became legal in the state of Delaware on July 5, 2023, when [The Delaware Marijuana Control Act](#) went into effect. This means that adults (ages 21+) may legally possess personal use quantities of marijuana in Delaware. Adults may also legally consume marijuana on private property.

The Delaware Marijuana Control Act allows municipalities to regulate land uses relating to cultivation, manufacturing, testing, and sale of marijuana within their jurisdiction through local ordinance. The City of Dover needs to determine a path forward to best manage the presence of this industry through local zoning ordinance.

What can an ordinance accomplish?

CAN	CANNOT
A municipal ordinance may prohibit the operation of marijuana establishments within their jurisdiction.	A municipal ordinance may not prevent marijuana establishments from opening outside of City limits in Kent County or in unincorporated areas.
A municipal ordinance may regulate the time, place, or manner in which marijuana establishments operate.	A municipal ordinance may not prevent adults from legally purchasing recreational marijuana at a licensed establishment, possessing marijuana within City limits, or using marijuana within City limits on private property.
	A municipal ordinance may not create a specific marijuana licensing fee or tax, though they may collect uniformly imposed fees and taxes.

Why is an ordinance needed?

The City Code does not currently define, zone land uses, or dictate regulations for marijuana related businesses. It is important that the City of Dover pass an ordinance to provide the public, business owners, City staff, and the Office of the Marijuana Commissioner (OMC) with clear guidance on whether, where, and under what conditions marijuana establishments are permitted within City limits.

When is an ordinance needed?

The Office of the Marijuana Commissioner will begin to accept applications for recreational marijuana business licenses on September 1, 2024. It is important for the City to have an ordinance in place soon, as licensees will begin selecting business locations as early as November 2024.

Four license types will be issued based on the following schedule mandated by The Delaware Marijuana Control Act:

License Type	License Description	Date Licenses Begin Being Issued	Number of Licenses Issued Statewide
Marijuana Cultivation Facility	Cultivation facilities will grow marijuana plants indoors, prepare and package marijuana, and sell to cultivation or product manufacturing facilities. They are NOT open to the public.	11/1/2024	Up to 60

Marijuana Product Manufacturing	Manufacturing facilities will manufacture, prepare, and package marijuana products and sell to manufacturing facilities or retail marijuana stores. They are NOT open to the public.	12/1/2024	Up to 30
Retail Marijuana Store	Retail stores will purchase marijuana products from manufacturing facilities and sell to consumers. They ARE open to the public.	3/1/2025	Up to 30
Marijuana Testing Facility	Testing facilities will test for potency and contaminants to ensure that products meet State safety standards. They are NOT open to the public.	3/1/2025	Up to 5

Ordinance Options

OPTION 1	
Prohibit all recreational marijuana businesses within the City of Dover	
PROS	CONS
This is a straightforward policy to administer and enforce.	Prohibition would not address common concerns related to marijuana legalization such as odors, possession or usage on private property.
	Marijuana businesses may open in the County just outside of Dover City limits or in enclave areas surrounded by Dover.
	Prevents the existing compassion center from converting to a retail license at their current location.
OPTION 2	
Allow marijuana related businesses to open as permitted use within certain zones in the City of Dover.	
PROS	CONS
This option gives the City control over elements of these uses (i.e. time and place).	Lack of community consensus about where and if uses should be allowed in Dover.
Retail establishments provide access to legal marijuana products that meet State safety standards.	Retail marijuana establishments generally operate in cash, making them potential targets for crime.
The public will have an opportunity to object to the issuance of a license near their property as there is a public notice process mandated by the State.	Marijuana cultivation and manufacturing facilities may produce a strong odor and be large consumers of water and energy.
OPTION 2a	
Allow marijuana related businesses only with additional restrictions to regulate the time, place, or manner in which businesses operate.	
PROS	CONS
Distancing requirements could be utilized to prevent a marijuana facility from opening too close to other uses such as K-12 Schools or residential zones.	Spatial evaluation will be needed to ensure that proposed facility locations meet distancing requirements in place.
Additionally, the City may : limit hours of operation, require additional odor control technology, implement standards in terms of architectural design, signage, and outdoor lighting, and require regular removal of litter and graffiti.	Extensive buffering requirements and zoning restrictions create administrative challenges for staff and confusion among the public. Each additional requirement adds to the administrative burden of executing the ordinance. For example, the City does not maintain a comprehensive list of some types of facilities, which makes applying buffers difficult.

Additional Considerations

[The Office of the Marijuana Commissioner \(OMC\)](#) is the agency responsible for regulating the recreational marijuana industry in Delaware. The OMC has developed regulations for the recreational marijuana industry that address the application and licensing process, specific facility requirements, staffing, safety and security, product tracking, health standards, packaging and labeling requirements, advertising, product testing, taxation, policy enforcement, and more. Regulations are finalized and in effect as of September 11, 2024. Meanwhile, information regarding the most recent Proposed Marijuana Regulations is available here: [Office of the Marijuana Commissioner \(delaware.gov\)](#)

Q&A

Can existing compassion centers be ‘grandfathered in’ at their current location?

HB408 became effective on 7/17/2024. This bill creates a temporary conversion license for existing medical marijuana compassion centers to operate for recreational marijuana purposes. The OMC will start the licensing process in August. Businesses will be converted by 10/31/2024 with adult use sales beginning no sooner than April 2025.

The proposed ordinance would add the definition of a compassion center to City Code and allow compassion centers as a permitted use in all zones. Adding a ‘grandfather’ clause to the ordinance COULD allow the existing compassion center located on Route 13 in Dover to convert to a retail license at their existing location IF recreational marijuana retail uses are permitted in the C-4 Highway Commercial Zone. To do this, language would be added to the proposed ordinance that would exempt compassion centers operating prior to the passage of the Marijuana Control Act from buffering requirements in converting to a marijuana retail store, provided that the facility is located in a zone that allows marijuana retail stores.

Can existing shops that sell smoke, vape, and CBD products be ‘grandfathered in’ at their current location?

‘Grandfathering’ is typically used when a use was once permitted but is no longer permitted in a certain zone. ‘Grandfathering’ provisions allow for existing uses that operated legally prior to a change in code to continue operation. In the case of compassion centers, while the use is different, it is similar to the marijuana retail store in that the product is the same and that these compassion centers operate under a license issued by the State. This is not the case for shops that sell smoke, vape, and CBD products.

Neither State nor City Code provides a definition of a shop selling smoke, vape, or CBD products, nor maintains a list of these facilities. These establishments are currently treated as retail use within the City’s Zoning Ordinance. This means that there is not an easy way to differentiate between shops selling smoke, vape, and CBD products and any other retail use (i.e. a gas station that sells cigarettes), making it difficult to draft code language to grandfather these uses. Shops that sell vape, smoke, and CBD products are markedly different uses from marijuana retail stores as defined by the Marijuana Control Act, which further complicates efforts to ‘grandfather’ these facilities. Additionally, there are several shops selling smoke, vape, and CBD products throughout commercial zones in Dover, potentially in areas where marijuana retail uses would not be permitted in whatever ordinance is approved by City Council.