Town Council
Work Session
Agenda Item 3.c.

Agenda Item:	**Updates to State Law Regarding Regulation of Retail Locations for Tobacco, Nicotine, and Hemp Products and the Implementation of Virginia's Retail Cannabis Marketplace**
Meeting Date:	October 6, 2026
Category:	Discussion (7:00 PM)
Prepared by:	Lauri Sigler, Deputy Town Attorney, David Stromberg, Zoning Administrator

Description:
Vice Mayor Hedrick requested a discussion item to consider directing staff to draft an ordinance prohibiting the retail sale of tobacco, nicotine, and hemp products within 1,000 linear feet of a child day center or a public, private, or parochial school in the Town of Herndon, as described in the agenda item request form attached to this item. Staff also seeks to brief the Town Council on steps the Town should take to prepare for implementation of Virginia's retail cannabis marketplace.

Background/Timing Impact:
As part of the budget-bill compromise enacted during the Virginia General Assembly's 2026 session, components were included that modified the rules governing the locations of tobacco, nicotine, and hemp retailers and established new requirements for implementing Virginia's retail cannabis marketplace.

1. **Location regulation of retail sales of tobacco, nicotine, and hemp products.**
Effective October 1, 2026, Virginia Code § 15.2-912.4 expressly authorizes a Virginia locality to regulate the locations where retail tobacco products and hemp products intended for smoking may be sold. Vape products are covered when they qualify as "retail tobacco products"—specifically, "liquid nicotine"—under Virginia Code § 58.1-1021.01. The Town may adopt a zoning ordinance prohibiting a covered establishment on property within 1,000 linear feet of a child day center, as defined in Virginia Code § 22.1-289.02, or a public, private, or parochial school. A child day center does not include a home-based daycare.

The Town's authority is limited to location. An ordinance may regulate where covered retailers operate, but not product standards, state licensing, or operational requirements administered by the Virginia Department of Agriculture and Consumer Services or the Department of Taxation. Any zoning ordinance must exempt: (1) a licensee holding a valid license under Virginia Code § 4.1-206.3 (ABC premises licenses); and (2) a retail location selling tobacco products or hemp products intended for smoking, or a retail

tobacco establishment, that was operating before July 1, 2024.

If the Town Council wishes to pursue this location-based regulation, it may direct staff to prepare an initiating resolution for a Zoning Ordinance Text Amendment (ZOTA). If the Council initiates the ZOTA, the Planning Commission would hold a public hearing, followed by a Town Council public hearing and consideration of adoption.

If an ordinance is adopted, administration of the new requirements would involve the following steps:

1. **Identify existing retailers.** Staff has researched and compiled a list of 10 qualifying retail establishments. All appear to have been established before July 1, 2024, and therefore would be grandfathered and exempt from the location restriction.
2. **Identify schools.** Compile a list of existing public, private, parochial schools, and child day centers.
3. **Create a GIS map.** Map the retailer and school locations so staff can evaluate the 1,000-foot separation requirement when reviewing a Zoning Appropriateness Permit (ZAP) application for a covered retailer.
4. **Monitor nonconforming uses.** Track existing lawful nonconforming retailers for changes in use that could terminate their nonconforming status.
5. **Publish applicant guidance.** Prepare website guidance for vape-shop applicants.

The Town is not required to adopt location-based zoning restrictions for retailers of tobacco, nicotine, and hemp products. If the Council elects to do so, earlier adoption would allow the Town to apply the restrictions sooner to new establishments.

2. **Implementation and regulation of Virginia's retail cannabis marketplace.**
Legislation enacted by the Virginia General Assembly in 2026 amended Title 4.1 of the Virginia Code to establish a regulated adult-use cannabis market. The Cannabis Control Act (Act) creates a comprehensive regulatory framework administered by the Virginia Cannabis Control Authority (Authority) and its Board of Directors. The Authority has primary control over the possession, sale, transportation, distribution, and delivery of regulated marijuana. Accordingly, the Town will not issue state cannabis licenses or regulate operational matters reserved to the Authority. The Act nevertheless has significant implications for localities, including zoning, business licensing, taxation, and other local powers.

The 2026 session also produced the following changes to cannabis-related legislation:

- The lawful possession limit increased to 2 ounces of cannabis; the limit of four plants for home cultivation remains unchanged.
- Effective July 1, 2027, penalties for public consumption increase as follows: first offense, from $25 to $250; second offense, a $250 fine and participation in a substance-abuse program; and third offense, a Class 4 misdemeanor.

The Act establishes three primary licensing categories, each with related subcategories:

1. **Cultivation:** marijuana cultivation facilities and microbusinesses.
2. **Processing and testing:** marijuana processing facility, marijuana testing facility, and pharmaceutical processor/cannabis dispensing facility.
3. **Transport and sale:** retail marijuana store, marijuana delivery operations, and marijuana transporter.

The Act caps the number of licenses the Authority may approve statewide in each category. Under Virginia Code § 4.1-629(A), localities generally may not regulate or prohibit uses within these licensing categories.

Required Town actions:

1. **Adopt a local marijuana sales tax.** By ordinance, the Town must levy a tax of at least 1% and no more than 3.5% on sales taxable under Virginia Code § 4.1-1004(A). The enacted rate must remain in effect for at least three years. A county tax does not apply within a town's boundaries. Before adoption, the Town must publish notice of the proposed tax and the Town Council must hold a public hearing.
2. **Provide notice of the tax ordinance.** Within 30 days after enactment, the Town must notify the Authority and each retail marijuana store and microbusiness located within the Town.
3. **Establish administrative procedures.** Adopt internal procedures for receiving and responding to Authority communications concerning preliminary license approvals within the Town.

Although the Act does not set a deadline for adopting the local tax ordinance, staff recommends adoption by May 1, 2027. The ordinance takes effect on the first day of the second month after enactment, and marijuana establishments may begin selling marijuana and marijuana products on July 1, 2027. Sellers will collect the tax, hold the proceeds in trust for the Commonwealth, and remit them to the Authority with monthly marijuana tax returns. The Authority will credit the Town from a state fund.

Optional Town actions:

1. **Review existing ordinances.** Identify and amend or repeal any Town provisions that conflict with or are inconsistent with the Act.
2. **Consider zoning amendments**. Evaluate whether to designate zoning districts for specific cannabis-related uses by right or by special exception and whether to establish setback, buffer, and site-plan requirements. Any amendments should be in place by **May 1, 2027**, or sooner.
3. **Consider public-consumption ordinances.** Determine whether to prohibit conduct addressed in Virginia Code § 4.1-1108 (public consumption) and § 4.1-1109 (possession or consumption on public school grounds). Any amendments

should be in place during the **fourth quarter of 2026 or the first quarter of 2027.**

4. **Consider hours-of-sale regulations.** Determine whether to adopt an ordinance establishing permitted hours for cannabis sales under Virginia Code § 4.1-610. Any ordinance should be in place during the **fourth quarter of 2026 or the first quarter of 2027.**
5. **Consider tobacco and hemp retail-location regulations.** Determine whether to adopt a zoning ordinance regulating locations for retail sales of tobacco products and hemp products intended for smoking. Any amendment should be in place during the **fourth quarter of 2026 or the first quarter of 2027.**

Strategic Focus Area:
Secure and Interconnected Community
Thriving Community

Fiscal Impact:
After the Town Council adopts a local marijuana tax, the Town will be entitled to revenue equal to 1% to 3.5% of sales taxable under Virginia Code § 4.1-1004(A), depending on the rate adopted.

Legal Impact:
The Town is not required to regulate the locations of retailers selling tobacco, nicotine, and hemp products. If the Town Council chooses to do so, the regulation must be adopted through the Zoning Ordinance Text Amendment (ZOTA) process and requires Town Council action and approval.

The Town must adopt a local marijuana tax under Virginia Code § 4.1-1004(A) as part of the implementation of the retail cannabis market in Virginia and requires Town Council action and approval. The Town should also consider adopting other regulations authorized by the Act, including possible amendments to the Town Code and Zoning Ordinance, and requires Town Council action and approval.

Staff Recommendation/Next Steps:
This is a discussion item; staff has no recommendation at this time. Following discussion, Council may provide direction regarding the consideration of this request.

Attachments:
1. Hedrick 9.3.26 - Agenda Item Request Form