Discussion 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

Town Council Work Session

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LIVE DIFFERENTLY. TOWN OF Herndon VIRGINIA

Virginia Code § 15.2-912.4 - Regulation of Retail Tobacco, Nicotine, and Hemp Products

- Expressly Authorizes a Virginia locality to regulate the locations where retail tobacco products and hemp products can be sold.
  - Hemp product defined as a total tetrahydocannabinol (THC) concentration no greater than 0.3 percent per product and no greater than 2 milligrams of THC per package
  - Retail tobacco products include liquid nicotine vapes and smokeless tobacco (i.e. ZYN pouch)
  - Localities **can** prohibit new establishments from operating within 1,000 linear from a public or private school and from a commercial daycare (does not include home-based daycares)
    - Herndon Middle School is within 1,000 feet of property where the zoning allows by-right retail
    - Herndon Elementary and Herndon High School are not within 1,000 feet of property where the zoning allows by-right retail
  - **Does not** apply retroactively
    - Ten existing vape/smoke shops in town remain legally nonconforming
  - Does not allow localities to restrict hours of operation
  - Does not allow localities to prohibit vape/smoke shops

Required Steps to Implement

- Direct staff to prepare an initiating resolution for a Zoning Ordinance Text Amendment (ZOTA)
  - If initiated, ZOTA will move to public hearing before the Planning Commission
  - Item will return to a public hearing before the Town Council with a recommendation from the Planning Commission
- Administrative actions
  - Identify existing retailors
  - Identify existing public, private, parochial schools, and child day centers
  - Create GIS map/shapefile
    - Needed for Zoning Appropriateness Permit (ZAP) review
    - Current ZAP reviews are based on zoning district, not distance from a specific existing use
  - Monitor nonconforming vape/smoke shops
  - Publish applicant guidance for vape/smoke shops

Virginia Code § 4.1, Subtitle II – Cannabis Control Act

- Administered by the Cannabis Control Authority
  - The entity with the power to regulate cannabis and marijuana in Virginia
    - Includes possession, sale, transportation, distribution, and delivery
- 2026 General Assembly and Special Session Budget Bill Changes
  - Increased lawful possession limit to 2 ounces of cannabis
  - Public consumption penalty increases
    - First offense: $25 fine to $250 fine
    - Second offense: $250 fine and participation in a substance-abuse program
    - Third offense: Class 4 misdemeanor
- Imposes a state tax of 6 percent
- Mandatory local ordinance to establish a tax of 1-3.5 percent
  - Town of Herndon must adopt local ordinance
- Limits local regulation of cannabis

Key Dates

- February 1, 2027
  - Virginia Cannabis Control Authority begins accepting license applications
- May 1, 2027
  - Virginia Cannabis Control Authority begins issuing licenses
- July 1, 2027
  - Retail cannabis sales are allowed in Virginia
- July 1, 2029
  - State tax rate on cannabis increases from 6 percent to 9 percent



Source: istock


Source: The Columbus Dispatch

Mandatory Local Actions

- Adopt Ordinance Establishing a Tax on Cannabis
  - Must be at least 1 percent and no more than 3.5 percent
  - Rate must remain consistent for 3 years after adoption
  - Adoption of tax by Fairfax County does not include Herndon or other towns within its borders
  - Ordinance should be adopted May 1, 2027, prior to start of retail cannabis sales on July 1, 2027
- Adopt Administrative Procedures for Communications with Virginia Cannabis Control Authority License Review
  - Virginia Cannabis Control Authority begins issuing licenses May 1, 2027
  - Localities have 30 days to respond to license applications under review by the Virginia Cannabis Control Authority
  - Failure to formally object to any license application within 30 days automatically waives the locality's right to object

Prohibited Local Actions

- Localities cannot impose a moratorium or opt out of the cannabis marketplace
- Localities cannot limit the number of licenses within their borders
- Localities cannot increase the minimum distance from schools or daycares set by the Virginia Cannabis Control Authority
- Localities cannot impose a tax other than 1-3.5 percent

Optional Local Actions

- Review existing town ordinances
  - Identify and reappeal any conflicts or inconsistencies
- Consider zoning amendments
  - Should establishments be permitted by-right or special exception?
  - Should setback, buffer and site plan requirements be updated?
  - Any amendments should be adopted by May 1, 2027
- Consider public-consumption ordinances
  - Adopt by 4th quarter 2026 – 1st quarter of 2027
- Consider hours-of-sale regulations
  - Adopt by 4th quarter 2026 – 1st quarter of 2027
- Consider tobacco & hemp retail- location regulations
  - Adopt by 4th quarter 2026 – 1st quarter of 2027

Other Information

An opinion published in the *Cardinal News* raises a question:

On a square-foot basis, cannabis growhouses use more power than data centers. Why isn't their electricity use being taxed?

In legalizing retail sales of cannabis, Virginia has set the stage for the equivalent of up to 148 data centers, if Virginians consume weed at the same rate as those in Washington state. If we match Michigan's pot consumption, we're looking at the equivalent of 78 data centers.

by **Dwayne Yancey** August 13, 2026

https://cardinalnews.org/2026/08/13/on-a-square-foot-basis-cannabis-growhouses-use-more-power-than-data-centers-why-isnt-their-electricity-use-being-taxed/