

**TO: Erik Wells, Town Manager; Selectboard**  
**FROM: Matt Boulanger, Planning Director**  
**RE: S.54/ACT 164 RETAIL CANNABIS LEGISLATION**

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**Retail Cannabis will be Legal in Vermont, Municipal Authority Limited to Zoning Compliance**

Governor Scott has allowed S.54 (now known as Act 164), a bill allowing for the legal production and sale of cannabis in Vermont, become law without his signature. Recreational cannabis growing, manufacturing, and warehousing/distribution will be allowed in Williston. If the townspeople vote to “opt in” to allowing retailing of recreational cannabis, the only local standards it can be subject to are those contained in Williston’s zoning bylaw. Following a preliminary discussion about the overall state law (see memo to Wells dated 10/15/2020), the Selectboard has requested additional information from staff about potential amendments to Williston’s zoning to address this new use.

**Regulation via Zoning and the Police Power**

It is important to note that, once there has been an opt-in vote, a municipality may not use its zoning or police power to ban retail cannabis sales entirely. However, the Selectboard may choose to establish a local Cannabis Control Commission, and that commission may require compliance with zoning as a condition for the issuance of a license:

**7 V.S.A. § 863 (a)(2)(b)** A municipality that hosts any cannabis establishment may establish a cannabis control commission composed of commissioners who may be members of the municipal legislative body. The local cannabis control commission may issue and administer local control licenses under this subsection for cannabis establishments within the municipality. **The commissioners may condition the issuance of a local control license upon compliance with any bylaw adopted pursuant to 24 V.S.A. § 4414 or ordinances regulating signs or public nuisances adopted pursuant to 24 V.S.A. § 2291.** The commission may suspend or revoke a local control license for a violation of any condition placed upon the license. The Board shall adopt rules relating to a municipality’s issuance of a local control license in accordance with this subsection and the local commissioners shall administer the rules furnished to them by the Board as necessary to carry out the purposes of this section.

The reference to 24 V.S.A. 4414 captures the town’s zoning power, while 24 V.S.A. 2291 enumerates the police powers of the town, which include additional powers related to signs.

**Zoning Tools Available**

While the full range of regulatory capability for towns is unknown, 7 V.S.A. §863 (a)(2)(d) above does point back to the applicability of zoning, as long as the zoning restrictions do not result in an outright prohibition on retail establishments. Zoning tools are discussed in greater detail below:

**1. Designating allowed and prohibited zoning districts for retail cannabis operations**

Williston currently categorizes uses of land by their North America Industry Classification System (NAICS) code number. Recreational marijuana stores are categorized under NAICS code 453998, “all other miscellaneous store retailers.” This land use is currently allowed in the Taft Corners Zoning District (TCZD) and on lots fronting on Route 2 in the Busines Park

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Zoning District (BPZD). The Selectboard could modify where the sale of recreational cannabis is allowed to exclude or include different zoning districts.

**2. Establishing an overlay district, which may have different boundaries than existing zoning boundaries.**

The Selectboard could map a boundary within which recreational cannabis sales would be allowed that is different from any pre-existing boundary- for example a smaller boundary within the TCZD or a boundary that contains portions of multiple zoning districts.

**3. Prohibiting the retailing of cannabis products as an accessory use to other allowed uses.**

While the areas in town where retail cannabis would be allowed under Williston's zoning are limited as discussed above, applicants often apply for and receive approval for retail sales in other districts as an accessory to a wholesale, manufacturing, farming, or warehousing use. As the growing, warehousing, wholesaling, and manufacturing of recreational cannabis products will be allowed in Williston under the new state law, the Selectboard may wish to consider amendments to clarify whether retailing of cannabis will be allowed as an accessory to any of these uses.

The accessory use rules in Williston's bylaws can be somewhat difficult to apply and determinations about which is the primary versus the accessory use (often based on floor area devoted to each) are not always the best tool to meet the town's goals to concentrate retailing to Taft Corners. If the Selectboard would prefer not to have retailing of cannabis in other districts, it could adopt bylaw language specifically prohibiting any cannabis retailing as an accessory use.

**4. Adopting specific development standards for retail cannabis operations**

When medical marijuana dispensaries were legalized in Vermont in June of 2012, Williston adopted standards allowing them only in the Industrial Zoning District West (IZDW) and only with limitations on signage and hours of operation, limits that are unique to that particular land use. The Selectboard could consider similar restrictions for recreational cannabis retailing.

**5. Requiring Development Review Board (DRB) review and conditional approval (Discretionary Permit) prior to administrative permitting (and local Cannabis Control)**

The Selectboard could consider requiring a public hearing process and the issuance of a discretionary permit by the Development Review Board (DRB) prior to any other permitting for retail cannabis, even to locate this use in an existing building. This requirement is in place in Williston for medical marijuana dispensaries.

**6. Setting "buffer zones" around schools, child care centers, and other places likely to have a high concentration of persons under the age of 21.**

The Selectboard could consider requiring minimum spacing between retail cannabis operations and day cares, schools, or other uses that attract large concentrations of young

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people (public recreation facilities, for example). This requirement was in the original 2012 statute for medical marijuana dispensaries for schools and day cares and is in Williston's existing bylaws.

**7. Limitations on outlet density, e.g. "No retail cannabis establishment shall be permitted within 1,000 feet of any other retail cannabis establishment."**

The Selectboard could adopt limitations on outlet density as described above- this is not done for any uses in Williston's current bylaw but is sometimes used in communities for uses such as bars, adult entertainment, tobacco and liquor retail, and other uses where a "strip" of similar uses is seen as undesirable.

**8. Specific limitations on signage for retail cannabis**

Although rules for signage that are not content-neutral are generally considered unconstitutional, cannabis remains a federally-illegal substance and municipalities may have some leeway in regulating signage for these uses differently than other commercial operations. Williston's bylaws do contain specific rules for signage for medical marijuana dispensaries.

**Next Steps**

If bylaw amendments are desired, the Selectboard could request that the Planning Commission take up the matter, create a draft bylaw amendment, and after public hearings, transmit this draft to the Selectboard for their consideration and possible adoption.

**Further Reading**

The initial planning staff memo to the Selectboard regarding Act 164 can be found [at this link](#).

The complete text of Act 164 is [available at this link](#).

There are strong parallels between how Vermont municipalities, under zoning, might regulate retail cannabis establishments and how they could regulate retail alcohol and tobacco. An excellent resource summarizing the issue as it relates to alcohol and tobacco is [Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising](#), prepared by the Vermont League of Cities and Towns