

## Town of Windsor

### Memorandum

July 13, 2021

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**TO:** The Honorable Mayor and Town Council

**FROM:** William G. Saunders, IV, Town Manager *WGS IV*

**SUBJECT:** Legislation regarding Retail Marijuana Stores

#### Background

Legislation has passed in the Commonwealth of Virginia, which will allow the sale of marijuana in retail stores. If localities want to prohibit these stores, they must actively opt out.

#### Specifics

The General Assembly (GA) has passed a marijuana bill, which encompasses numerous elements regarding the legalization of small amounts of marijuana and marijuana products. Portions of this legislation have already become law and others require re-enactment by the GA before becoming law. Retail marijuana stores will require re-enactment, but what is currently intended is already written into House Bill 2312.

Below find the major points regarding retail marijuana stores in the Commonwealth:

- Marijuana stores may be approved by ordinance.
- To prohibit them, or opt out, a referendum must be held to decide the issue.
- If a referendum is held, another cannot be held for four (4) years.
- Towns can have a separate referendum from their host county.
- Local ordinances cannot prohibit cultivation, processing or manufacturing.
- Local ordinances can regulate the distance of stores from child-related facilities and their hours of operation.
- The Commonwealth of Virginia will put a 21% tax on marijuana and marijuana products.
- Localities can put up to a 3% tax on marijuana and marijuana products.
- Only 400 retail marijuana store licenses will be available statewide (Approximately the same number as ABC stores in the state).

#### Enclosures

Code Section from HB 2312

#### Recommended Action

For Council's information.

## Relevant Sections of HB 2312 on Retail Marijuana Stores

§ [4.1-608](#). *Local referendum on establishment of retail marijuana stores.*

A. *The governing body of any county, city, or town having a population of 1,000 or more may by ordinance approve the operation of retail marijuana stores within the boundaries of the county, city, or town.*

B. *As an alternative to subsection A, a petition signed by qualified voters equal in number to at least 10 percent of the number registered in the jurisdiction on January 1 preceding its filing or by at least 100 qualified voters, whichever is greater, may be filed with the circuit court of the county or city, or of the county wherein the town or the greater part thereof is situated, asking that a referendum be held on the question of whether the operation of retail marijuana stores shall be allowed within that jurisdiction. Upon the filing of a petition, the court shall order the election officials of the county, city, or town, on the date fixed in the order, to conduct a referendum on the question. The court order shall set the date for the referendum in conformity with the requirements of § [24.2-682](#), but in no event shall such date be more than 90 days from the date the order is issued. The clerk of the circuit court shall publish notice of the referendum in a newspaper of general circulation in the county, city, or town once a week for three consecutive weeks prior to the referendum.*

*The question on the ballot shall be:*

*"Shall the operation of retail marijuana stores be allowed in \_\_\_\_\_ (name of county, city, or town)?"*

*The referendum shall be ordered and held and the results certified as provided in § [24.2-684](#). Thereupon the court shall enter of record an order certified by the clerk of the court to be transmitted to the Board and to the governing body of the county, city, or town.*

C. *Once a referendum has been held, no other referendum on the same question shall be held in the county, city, or town within four years of the date of the prior referendum. However, a town shall not be proscribed from holding a referendum within such period although an election has been held in the county in which the town or a part thereof is located less than four years prior thereto.*

§ [4.1-609](#). *Effect of local option referenda.*

A. *If in any referendum held under the provisions of § [4.1-608](#) in any county, city, or town a majority of the qualified voters vote "Yes" on the question, then on and after the date of the order of the court setting forth the results of such referendum was entered of record, retail marijuana stores shall be allowed in such county, city, or town.*

B. *If in any such referendum held in any county, city, or town in which a majority of the qualified voters have previously voted to allow the operation of retail marijuana stores and in a subsequent election a majority of the voters of the county, city, or town vote "No" on the question stated in § [4.1-608](#), then such retail marijuana stores shall, in accordance with this chapter, be prohibited within the county, city, or town on and after 60 days from the day on which the order of the court setting forth the results of such election is entered of record.*

C. *For the purpose of this section, when any referendum is held in any town, separate and apart from the county in which such town or a part thereof is located, such town shall be treated as being separate and apart from such county.*

§ [4.1-610](#). Contests of local option referenda.

The regularity or legality of any referendum held pursuant to § [4.1-608](#) shall be subject to the inquiry, determination, and judgment of the circuit court that ordered the referendum. The court shall proceed upon the complaint of 15 or more qualified voters of the county, city, or town, filed within 30 days after the date the results of the referendum are certified and setting out fully the grounds of contest. The complaint and the proceedings shall conform as nearly as practicable to the provisions of § [15.2-1654](#), and the judgment of the court entered of record shall be a final determination of the regularity and legality of the referendum.

§ [4.1-611](#). Local ordinances or resolutions regulating retail marijuana or retail marijuana products.

A. No county, city, or town shall, except as provided in § [4.1-612](#), adopt any ordinance or resolution that regulates or prohibits the cultivation, manufacture, possession, sale, wholesale distribution, handling, transportation, consumption, use, advertising, or dispensing of retail marijuana or retail marijuana products in the Commonwealth.

B. However, the governing body of any county, city, or town may adopt an ordinance (i) that prohibits the acts described in § [4.1-652](#), or the acts described in § [4.1-653](#), and may provide a penalty for violation thereof and (ii) that regulates or prohibits the possession of opened retail marijuana or retail marijuana products containers in its local public parks, playgrounds, public streets, and any sidewalk adjoining any public street.

C. Except as provided in this section, all local acts, including charter provisions and ordinances of counties, cities, and towns, inconsistent with any of the provisions of this chapter, are repealed to the extent of such inconsistency.

§ [4.1-612](#). Local ordinance regulating time of sale of retail marijuana and retail marijuana products.

The governing body of each county may adopt ordinances effective in that portion of such county not embraced within the corporate limits of any incorporated town, and the governing body of each city and town may adopt ordinances effective in such city or town, fixing hours during which retail marijuana and retail marijuana products may be sold. Such governing bodies shall provide for fines and other penalties for violations of any such ordinances, which shall be enforced as if the violations were Class 1 misdemeanors with a right of appeal pursuant to § [16.1-106](#).

A copy of any ordinance adopted pursuant to this section shall be certified by the clerk of the governing body adopting it and transmitted to the Board.

On and after the effective date of any ordinance adopted pursuant to this section, no retail marijuana store shall sell retail marijuana and retail marijuana products during the hours limited by the ordinance.

§ [4.1-637](#). Marijuana tax; exceptions.

A. A tax of 21 percent is levied on the sale in the Commonwealth of any retail marijuana, retail marijuana products, marijuana paraphernalia sold by a retail marijuana store, non-retail marijuana, and non-retail marijuana products. The tax shall be in addition to any tax imposed under Chapter 6 (§ [58.1-600](#) et seq.) of Title 58.1 or any other provision of federal, state, or local law.

B. The tax shall not apply to any sale:

1. From a marijuana establishment to another marijuana establishment.
  2. Of cannabis oil for treatment under the provisions of [§ 54.1-3408.3](#) and Article 4.2 ([§ 54.1-3442.5](#) et seq.) of the Drug Control Act.
  3. Of industrial hemp by a grower, processor, or dealer under the provisions of Chapter 41.1 ([§ 3.2-4112](#) et seq.) of Title 3.2.
  4. Of industrial hemp extract or food containing an industrial hemp extract under the provisions of Article 5 ([§ 3.2-5145.1](#) et seq.) of Chapter 51 of Title 3.2.
- C. All revenues remitted to the Authority under this section shall be disposed of as provided in [§ 4.1-607](#).
- [§ 4.1-638](#). Optional local marijuana tax.
- A. Any locality that has by referendum authorized the operation of retail marijuana stores may by ordinance levy a three percent tax on any sale taxable under [§ 4.1-637](#). The tax shall be in addition to any local sales tax imposed under Chapter 6 ([§ 58.1-600](#) et seq.) of Title 58.1, any food and beverage tax imposed under Article 7.1 ([§ 58.1-3833](#) et seq.) of Chapter 38 of Title 58.1, and any excise tax imposed on meals under [§ 58.1-3840](#). Other than the taxes authorized and identified in this subsection, a locality shall not impose any other tax on a sale taxable under [§ 4.1-637](#).
- B. If a town imposes a tax under this section, any tax imposed by its surrounding county under this section shall not apply within the limits of the town.
- C. Nothing in this section shall be construed to prohibit a locality from imposing any tax authorized by law on a person or property regulated under this chapter. Nothing in this section shall be construed to limit the authority of any locality to impose a license or privilege tax or fee on a business engaged in whole or in part in sales taxable under [§ 4.1-637](#) if such tax or fee is (i) based on an annual or per-event flat fee authorized by law or (ii) is an annual license or privilege tax authorized by law, and such tax includes sales or receipts taxable under [§ 4.1-637](#) in its taxable measure.
- D. Any locality that enacts an ordinance pursuant to subsection A shall, within 30 days, notify the Authority and any retail marijuana store in such locality of the ordinance's enactment. The ordinance shall take effect on the first day of the second month following its enactment.
- E. Any tax levied under this section shall be administered and collected by the Authority in the same manner as provided for the tax imposed under [§ 4.1-637](#).
- F. All revenues remitted to the Authority under this section shall be disposed of as provided in [§ 4.1-607](#).