

How To Navigate Zoning In Conn.'s New Cannabis Market

By **Joseph Williams, Chelsea McCallum and Sarah Westby** (January 12, 2023)

Now that Connecticut has allowed recreational marijuana sales to begin on Jan. 10, various types of adult-use cannabis establishments will seek to open locations across the state.

Zoning is a major consideration for cannabis businesses seeking a viable location for their establishment. Connecticut law grants authority to municipalities to regulate land through zoning controls, meaning that each municipality will have different zoning regulations with respect to cannabis establishments.

With that in mind, it is vital that cannabis establishments seeking to operate in Connecticut familiarize themselves with the zoning regulations and application process in their target municipalities before leasing or purchasing space.

Overview of the State Legislation's Zoning Section

Section 21a-422f of the Connecticut General Statutes establishes the following municipal authority for zoning regulation of cannabis establishments.

A municipality may limit the operations and location of adult-use cannabis establishments within its borders in three ways. It may:

1. Prohibit the establishment of a cannabis establishment altogether;
2. Establish reasonable restrictions regarding the hours and signage within the limits of the municipality; or
3. Establish restrictions on the proximity of cannabis establishments to "any church, public or parochial school, convent, charitable institution, whether supported by private or public funds, hospital or veterans' home or any camp, barracks or flying field of the armed forces." Municipalities may expand this list to include day care facilities, public parks and libraries, among other establishments. They may also impose distance requirements between cannabis establishments.

If a municipality does not address the zoning of cannabis establishments in its regulations, cannabis establishments must be zoned as if for any other similar use. The legislation does not define similar use, but presumably the Legislature intended similar uses to include liquor stores and smoke shops.

All zoning of retailers or microcultivators must be done through special permit or other affirmative approval. This means that retailers or microcultivators must seek permission from the municipality before attempting to open a cannabis establishment in that municipality.

However, it is also likely that municipalities will require some form of affirmative approval, such as a special permit or site plan approval, for other cannabis establishments such as cultivators and manufacturers.



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Can Your Cannabis Establishment Operate in Your Desired Municipality?

When determining where you want to open your adult-use cannabis establishment, you should first determine whether the zoning regulations of your target municipality permit adult-use cannabis establishments at all.

We have already seen a significant disparity across the state in how municipalities have elected to regulate adult-use cannabis establishments through their zoning regulations, ranging from outright bans to approval with varying restrictions.

Some municipalities have adopted a moratorium that serves as a temporary ban on adult-use cannabis establishments. A moratorium is adopted to give the municipality additional time to determine how it will zone for adult-use cannabis establishments.

For example, in Shelton, the Planning and Zoning Commission adopted a "city-wide one-year moratorium on the acceptance of applications, the use of land, built structure or related activity to a Cannabis Establishment" on March 29, 2022.[1]

Businesses will want to stay apprised of the municipality's planning and zoning commission's discussions regarding adult-use cannabis establishments, however, because each moratorium will expire, and the municipality will then decide whether to permit adult-use cannabis establishments.

Some municipalities have instituted a total ban on adult-use cannabis establishments, while others remain undecided. For example, in Clinton and Wallingford, recreational cannabis establishments are prohibited in all zones.[2]

If you have selected a municipality that allows adult-use cannabis establishments, you should then consider the restrictions imposed by its zoning regulations and how they affect your business plan.

For example, some municipalities have imposed location, proximity and hours-of-operation restrictions on adult-use cannabis establishments, such as:

- Requiring cannabis establishments to be located more than 500 feet from any school, municipal park, day care center, municipal recreational facility or library;
- Limiting retail establishments to commercial zones;
- Limiting production facilities to industrial zones; or
- Limiting hours of operation to 8 a.m. to 10 p.m. on Monday through Saturday, and 10 a.m. to 6 p.m. on Sundays.

These are just a few examples, and each municipality's restrictions will vary.

Zoning regulations may also dictate a minimum or maximum number of parking spaces; front, side and rear yard requirements; maximum building coverage and more.

Once you have reviewed the zoning regulations and settled on your target municipality, you will need to prepare an application for the special permit or other approval, as required by the municipality, that will allow your adult-use cannabis establishment to operate there.

Some municipalities have online application portals with clear instructions. In other municipalities, it may not be as clear. Regardless of which municipality you are applying to, you should ensure that your application fulfills all requirements and try to anticipate some of the questions that may arise, such as concerns about parking and traffic.

For example, in Old Saybrook and Manchester, residents voiced opposition to allowing a dispensary to open, in part because of the traffic impacts, and in particular, because of what some perceived to be already dangerous intersections.[3]

Similarly, in Orange, the Town Planning and Zoning Commission voiced concerns about the traffic impacts on nearby residential neighborhoods and the possibility that busy drive-through lines would create backup on nearby roads.[4] Residents of Willington expressed similar concerns about parking and drive-through line traffic.[5]

The consistent focus on traffic concerns demonstrates the importance of due diligence, such as hiring a qualified engineering firm with experience evaluating the parking and traffic demands of cannabis establishments.

You should consult with an engineering firm during your due diligence period to determine whether your prospective site meets your needs in terms of size, configuration and location. That way, you can identify any potential pitfalls while you still have the option to terminate your purchase or lease agreement.

Ultimately, it will be up to the municipality's planning and zoning commission to decide whether your cannabis establishment can operate there.

If the planning and zoning commission finds that your proposed use does not conform to the municipality's zoning regulations, it will reject your application and prevent your business from operating there.

If you submit an application that is rejected, you have the right to appeal to the Connecticut Superior Court, but typically no new evidence can be presented on appeal, and it is difficult to overturn a discretionary zoning decision.

A well-drafted application helps improve your chances of gaining the municipality's approval and avoiding any need to appeal.

Although the legislation and zoning regulations discussed in this article are specific to Connecticut and its municipalities, other states that have legalized the sale of recreational cannabis have taken a similar approach.

For example, the Arizona Revised Statutes permit a locality to enact zoning regulations with respect to marijuana establishments, such as prohibiting them altogether; regulating time, place and manner; or establishing restrictions on public signage.[6]

Similarly, the Rhode Island General Laws allow cities or towns to "adopt ordinances and by-

laws that impose reasonable safeguards on the operation of cannabis establishments," such as restrictions on time, place, manner and signage.[7]

Thus, regardless of the state that you seek to operate your retail cannabis establishment in, you can set yourself up for success by reviewing the local zoning regulations to determine how they regulate the use of land, and especially how they regulate the use of land specifically with respect to cannabis establishments.

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[1] Special Meeting Minutes: Tuesday, March 29, 2022, City of Shelton: Planning and Zoning Commission 1–3 (Mar. 29, 2022), http://cityofshelton.org/board_of_commission/planning-and-zoning-commission/, <http://cityofshelton.org/download/52720/>.

[2] Zoning Regulations: Amendments, Town of Clinton: Planning & Zoning T-35 (Jul. 11, 2022), <https://clintonct.org/DocumentCenter/View/12436/TEXT-AMENDMENTS-July-11-2022>; Wallingford Zoning Regulations, Town of Wallingford: Planning & Zoning § 6.34(B) (Dec. 18, 2021), https://www.wallingford.ct.us/Customer-Content/www/CMS/files/Zoning_Regulations122021.pdf.

[3] Brendan Crowley, Traffic Concerns Not Sufficient to Block Old Saybrook Dispensary, Zoning Chair Warns, CT Examiner (Sep. 8, 2022), <https://ctexaminer.com/2022/09/08/traffic-concerns-not-sufficient-to-block-old-saybrook-dispensary-zoning-chair-warns/>; Minutes of Public Hearing Held by the Planning and Zoning Commission: September 7, 2022, Town of Manchester: Planning and Zoning Commission 2–5 (Sep. 7, 2022), <https://ecode360.com/MA2034/document/682238498.pdf>.

[4] Austin Mirmina, Orange Zoning Board Tables Vote on Controversial Boston Post Road Pot Retailer Amid Traffic Concerns, New Haven Register (Dec. 7, 2022), <https://www.nhregister.com/news/article/Orange-zoning-tables-vote-controversial-retail-pot-17637781.php>.

[5] Meeting Minutes: November 1, 2022, Town of Willington: Planning and Zoning Commission 2–3 (Nov. 1, 2022), https://www.willingtonct.gov/sites/g/files/vyhlif1456/f/minutes/pzc_minutes_11-1-22.pdf.

[6] Ariz. Rev. Stat. § 36-2857(A) (2020).

[7] 21 R.I. Gen. Laws § 21-28.11-16 (2022).