



Pittsburgh’s zoning code limits the operation of medical marijuana dispensaries, like CY+ on Penn Avenue in the city’s Strip District, to commercial zones only.

Marijuana and the Zoning Board

LOCAL GOVERNMENTS ARE INCREASINGLY FACED with decisions regarding legalized marijuana—or cannabis, the term I prefer—businesses. That’s because the status of the drug has changed dramatically since California became the first state to legalize it for medical use in 1996. Currently, 10 states and the District of Columbia allow adults to buy and use cannabis for recreational use, and 23 more have legalized medical use.

Meanwhile, the federal government still considers cannabis illegal as a Schedule 1 drug under the federal Controlled Substances Act. U.S. Attorneys rarely prosecute cannabis businesses or individual users, provided they comply with state law. At the same

time, however, federally insured banks refuse to deal with cannabis businesses, and the U.S. Food & Drug Administration has prosecuted businesses that use the drug in foods or cosmetics in ways that violate the federal Food, Drug & Cosmetics Act.

The starting point for any planning commission or zoning board in a state that has legalized cannabis—whether for medical or adult recreational use—is detailed knowledge of your state’s statutes. Most states allow the prohibition of facilities, but not all. Delaware, for example, allows local zoning of medical marijuana facilities, but does not permit outright prohibition. The 2015 Oregon statute legalizing adult recreational use preempts local bans, but only by citizen initiative. In California, local governments may prohibit cannabis businesses but may not ban personal cannabis cultivation “inside a residence or accessory structure.”

Many local governments have chosen total prohibition—particularly in states that have legalized adult recreational use. In California, for example, only 89 of the state’s 482 cities allow adult recreational establishments.

But while prohibition relieves cities of the burdens associated with regulation, it also denies them the revenue these businesses can provide. In large cities, that can be a significant amount. For example, Denver anticipates it will receive more than \$32 million this year from a combination of “state share back” dollars and the city’s own 5.5 percent tax on retail cannabis businesses.

What can cities regulate?

The first step, again, is to look to the state law, but the following possibilities are commonly left to local choice: designating zoning districts where certain businesses are permitted or prohibited; establishing reasonable “buffer” requirements for “sensitive” uses such as schools or residential districts, but often subject to state minimums; setting reasonable hours of operation; and requiring approval for items associated with development review,

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Planning Tools

like design review, dimensional requirements, traffic circulation, signage, and lighting.

What about a moratorium? Unless prohibited or preempted under state law, moratoriums are usually allowed, provided that the duration is reasonable. What's "reasonable"? State court decisions on this point vary, but in its 2002 ruling in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, the U.S. Supreme Court stated that "a moratorium lasting more than one year should be viewed with special skepticism."

Nuts and bolts

So what can a board or commission do? Three things:

1. DESIGNATE CERTAIN ZONING DISTRICTS

where the various types of cannabis businesses—retail dispensaries and facilities for cultivation, processing, and distribution—are permitted or prohibited.

2. **DECIDE WHICH, IF ANY,** of those businesses should be permitted as-of-right as opposed to being approved as a conditional use.

3. DETERMINE APPROPRIATE BUFFERING

and spacing requirements, keeping in mind that these must be in accordance with the state statutory scheme. "Buffers" are distancing requirements from "sensitive" land uses such as a K-12 school, day care center, or library. "Spacing" is the required distance between any two cannabis facilities. Keep in mind, however, that the area of exclusion increases exponentially with the length of the radius. Thus, a 500-foot distance requirement excludes other facilities within 18 acres, while doubling that requirement to 1,000 feet will quadruple the excluded area.

Remember that what makes for strong zoning ordinances generally also applies to regulating cannabis businesses. Your ordinance should have a clear statement of purpose acknowledging the need to safeguard public health, safety, and welfare while complying with state statutory requirements, which should



ONE BOOK AT A TIME

APA's 2019 National Planning Awards recognized a children's book—*Parker the Planner: A City Planning Story*—with a silver Achievement Award for Public Outreach. The book is one of a series produced by Minnesota engineering and design firm Bolton & Menk, Inc., aimed at introducing young audiences to the fields of engineering, landscape architecture, and planning.

Parker was written by BMI landscape architect Madeline Dahlheimer. The story is told by Parker Perez, who lives in a town with no sidewalks and no playgrounds, and sets out to make a better place. "I composed most of the text (in rhyme) when I was driving to work," says Dahlheimer. "I thought about my childhood, building cities with Playmobil or Legos, and like Parker I dreamed about improving my community."

At this point, the books are not for sale. "We print copies as needed and distribute them at conferences; to clients, friends, and family; and at schools," says Dahlheimer, who has degrees in landscape architecture and urban planning. All of the books have been written by BMI staff members. "The idea," she says, "is to translate technical information and concepts into a form that children can understand and to expand their perspective on the built environment."

Other titles in the series include *Walter the Raindrop* on water cycles and *Doug the Water Drop* on wastewater; *Green Trees and Sam* on landscape architecture; *Will Learns About Civil Engineering in the World Around Him*; and *Lindsey the GIS Specialist*. They are all available online at bolton-menk.com/library.

—Ruth Eckdish Knack, FAICP
Knack is a former executive editor of *Planning*.

be supplemented with a well-developed "Findings" section.

Good definitions of key terms—cannabis, medical marijuana dispensary, and adult recreational retail marijuana establishment—are a must.

It is also essential to keep state preemption in mind. Be aware of rights created by state statute—the right to home

cultivation for personal use, for example. Finally, the ordinance should not permit conduct that the state prohibits or prohibit conduct that the state permits. ■

—Alan Weinstein

Weinstein is the director of the Law and Public Policy Program at the Cleveland-Marshall College of Law and Maxine Goodman Levin College of Urban Affairs at Cleveland State University. For more on his research, visit the Social Science Research Network at ssrn.com/author=30790.

May You Live In Interesting Times

THAT OLD CURSE IS PARTICULARLY TIMELY for planning commissioners and planning staffs. On top of climate change, they must chart a path forward in a world increasingly shaped by demographic, economic, and technological changes. These changes can bring opportunity to cities and suburbs alike if they are willing to let go of the old principles that have guided their work for decades.

Take, for example, two very different places: long-suffering downtown Hammond, Indiana, and affluent, suburban Newton, Massachusetts.

With my colleague Jeff Speck, AICP, I am working on a revitalization plan for downtown Hammond, which was the 1940s setting for the classic film, *A Christmas Story*, but today is almost a ghost town. In Newton, I am collaborating on a plan to revitalize an outdated strip center in the midst of leafy suburban neighborhoods.

These very different places share a common opportunity to reemerge as robust, walkable, mixed use urban centers representing the heart of an increasingly diverse country.

We stand today not at the peak but rather on the cusp of a new era, one that touches almost every community across North America. Millennials and empty nesters are increasingly attracted to urban living—in cities and suburbs alike. Over the next 20 years, their unprecedented numbers will make it difficult to meet the growing demand for housing and amenities.

Meanwhile, knowledge industry jobs will steadily follow well-educated workers to the walkable downtowns and suburban centers that they prefer. Finally, in less than a decade, connected autonomous vehicles (which use various technologies to communicate with drivers) will begin to tip the balance even further toward urban and suburban lifestyles.

Flexibility is key if we are to benefit from these trends. That means adopting a more flexible approach to planning—abandoning fixed outcomes like total square footage and number of parking

spaces in favor of performance-based goals that define outcomes in terms of issues, such as quality of life and economic development objectives.

But fair warning: This kind of flexibility touches the third rail of North American planning: density, traffic, and parking.

Parking

Let's start with parking. Traditional ratios are increasingly meaningless. In some scenarios, more development can mean less parking.

Self-parking cars—likely to be the norm within a decade—will require cities to radically rethink parking requirements. With the arrival of shared autonomous vehicles (often referred to as SAVs), which need far less space, garages could be largely empty.

In Hammond, planning for this future could mean abandoning a potential \$5 million public parking structure and focusing on surface parking in order to support the city's first new mixed use development. Over the next



The Northland Newton Development project outside of Boston (above) will redevelop an existing strip mall (below) into a higher density, mixed use urban village with commercial and retail space and more than 800 new housing units surrounding a community green.

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History

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two decades, as housing, jobs, and retail uses return downtown, planners, anticipating declining parking demand, recommend that the city hold off on expensive garage investments in favor of sharing existing lots.

Newton is also thinking ahead. City officials understand that parking needs will change over the next two decades. Parking built to serve the first phase of the Needham Street project might eventually have to support some million square feet of additional development.

Traffic

Planners in both cities are starting to look at technology and shared trips to manage the traffic impacts associated with significant development. Both redevelopment initiatives envision narrowing streets to create wider sidewalks, adding protected bike lanes, and finding green solutions to stormwater management.

Density

That brings us to density. The first hurdle is to explain to skeptical stakeholders, who have watched their downtowns decline for decades, that demographics are delivering a new era of opportunity.

Planners in Hammond and Newton have taken the lead in educating stakeholders about the potential livability and economic benefits that well-planned and designed spaces can bring—even with higher density.

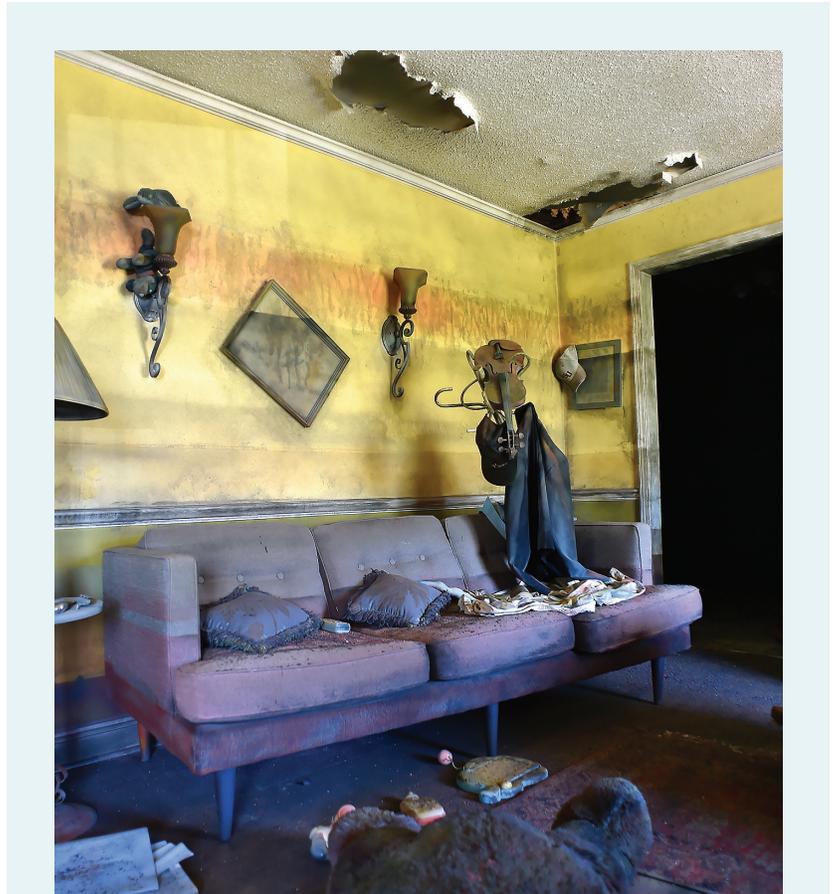
On the last day of the downtown community charrette, Hammond's public works chief asked Jeff Speck an intriguing question concerning roadway capacity: What would have to be sacrificed to accommodate several million square feet of new downtown development? In the past, that figure would have been enormous. But no more.

"What can we do to make our downtown more walkable?" the official asked.

The future looks bright indeed. ■

—David Dixon, FAIA

Dixon is the vice president of Planning and Urban Design at Stantec. He is based in Boston.



HISTORY A TIME TO REMEMBER

Markers commemorating Hurricane Katrina are everywhere in New Orleans. But the newest is far different from the typical concrete ones.

Thirteen years after the deadly catastrophe, the Flooded House Museum opened this year in Gentilly, where a failed levee adjoining the London Avenue Canal allowed floodwaters to ravage the neighborhood and the rest of the Lower Ninth Ward. A persistent neighborhood activist named Sandra Rosenthal had the inspired idea of saving the last house standing next to the canal and transforming it into the museum. With the help of a corps of volunteers, including two talented young artists, she created a simulation of the flooded interior of the one-story brick dwelling. Its watermarked walls and flood-ravaged furniture are visible night and day through the moldy windowpanes.

"It's the view that the neighbors had when they returned after the flood," she says.

Find out more about the project on Levees.org, the website Rosenthal started in 2007 to inform the public about the cause of the levee failures, which she and many in New Orleans attribute to neglect by the U.S. Army Corps of Engineers.

—Ruth Knack, FAICP



Damage depicted by Flooded House Museum in New Orleans serves as a cautionary reminder for those living in areas protected by levees.