



**Z-12-2019: Requests amendments to the Zoning Ordinance relative to the location and regulation of medical and recreational cannabis business establishments.**

**Prepared for:** Village of Burr Ridge Plan Commission/Zoning Board of Appeals  
Greg Trzupsek, Chairman

**Prepared by:** Evan Walter, Assistant Village Administrator

**Date of Hearing:** October 7, 2019

The Board of Trustees has directed the Plan Commission to consider amendments to the Zoning Ordinance relative to the location and regulation of medical and recreational cannabis business establishments. On June 25, 2019, Governor Pritzker signed HB 1438, the Cannabis Regulation and Tax Act, which legalized the sale, possession, and consumption of recreational cannabis by adults over 21 effective January 1, 2020. In response to the adoption of the Act, the Board of Trustees seeks recommendations from the Plan Commission regarding appropriate zoning regulations for medical and recreational cannabis businesses in Burr Ridge. This report is meant to provide information regarding medical and recreational cannabis businesses as defined and regulated by the Act. For the purpose of this report, “Medical Businesses” refers to facilities that serve the medical cannabis market, while “Recreational Businesses” refers to facilities that serve the recreational cannabis market.

### **Medical Businesses**

On August 1, 2013, the Compassionate Use of Medical Cannabis Pilot Program Act was created by the General Assembly. The law created a four-year pilot medical cannabis program (henceforth: “Pilot”) that went into effect on January 1, 2014; the Pilot was later made permanent on August 11, 2019. The Pilot allows for patients with specified medical conditions to obtain an ID card allowing them to buy limited amounts (up to 2.5 ounces every 14-day period) of medical cannabis from a licensed dispensary. The Pilot limited the number of dispensaries to 60; 55 such licenses have been issued and are currently operating. No more than four such dispensaries may be located in DuPage County and Lyons Township (Burr Ridge resides entirely within these jurisdictions). The Pilot allowed units of local government to establish regulations that provide for reasonable zoning regulations for the cultivation and dispensing of medical cannabis while not completely prohibiting such uses; Burr Ridge added “Medical Cannabis Dispensing Facility” as a special use in the G-I General Industrial District in 2013. No Medical Businesses are presently operating in Burr Ridge and no petitions for such a special use have been received at this time.

### **Recreational Businesses**

As stated previously, the Cannabis Regulation and Tax Act (henceforth: the “Act”) was recently adopted by the State of Illinois. The Act:

- legalizes the possession and use of cannabis for recreational purposes;
- authorizes the sale of recreational cannabis at retail dispensaries;

- permits the expansion of cultivation centers (previously only permitted to grow for medical cannabis sales); and
- allows new cannabis facilities uses such as “craft growers” and processors.

Staff has provided analyses regarding elements of the Act which may affect the Plan Commission’s determination as to the land use and zoning impacts of Recreational Businesses, including cannabis possession and consumption, public safety, taxation and revenue mechanisms, and State licensing timelines, which are found in the report. A summary of legal powers available and unavailable to the Village regarding the regulation of Recreational Businesses is listed in the following table.

<b>Legal Power</b>	<b>Local Authority</b>
Legal possession of cannabis (with quantity restriction)	<b>NO – Must Allow</b>
Private consumption of cannabis (i.e. residences)	<b>NO – Must Allow</b>
Home grow of up to five plants by medical cardholders	<b>NO – Must Allow</b>
Cannabis consumption in public places (*exception listed below)	<b>NO – State Prohibits</b>
Delivery of cannabis products to the home	<b>NO – State Prohibits</b>
Consumption at schools, by minors, or in presence of minors	<b>NO – State Prohibits</b>
Limit the number of each Recreational Business	<b>YES – Local Control</b>
Create an Overlay District to allow for more specific land use control	<b>YES – Local Control</b>
Create custom separation requirements between sensitive uses	<b>YES – Local Control</b>
Outright ban on the establishment of businesses by ordinance	<b>YES – Local Control</b>
<i>If not banned</i> – enact zoning controls on businesses	<b>YES – Local Control</b>
<i>If not banned</i> – Tax cannabis at up to 3% beyond ordinary sales tax	<b>YES – Local Control</b>
<i>If not banned</i> – *Allow on-premises consumption of cannabis	<b>YES – Local Control</b>
Enact reasonable regulations of home grow by medical cardholders	<b>YES – Local Control</b>

Zoning

The Act states that municipalities may “enact ordinances to prohibit or significantly limit a [Recreational Business’] location.” Several land use restrictions were created in the Act:

- Recreational cannabis uses are prohibited in residential zoning districts.
- Retail dispensaries and craft growers may not be located within 1,500 feet of another retail dispensary.
- No cannabis advertisements may contain any statement or illustration that is false or misleading; promotes the overconsumption of cannabis; displays cannabis or an image of a leaf or bud; shows a minor consuming cannabis; makes health or medicinal claims about cannabis; or includes any image that is likely to appeal to minors.

The six uses described below were specifically created for licensure by the Act. Any of the uses below may be prohibited or permitted and regulated by the Village as desired.

*Dispensary.* A facility that sells cannabis and cannabis-infused products, cannabis seeds, and paraphernalia to the general public and qualified medical cannabis patients. Recreational dispensaries are retail businesses similar to retail uses that are allowed in B-1 and B-2 Districts. Most retail businesses in the B-1 and B-2 Districts that are under 7,000 square feet in floor area

are permitted uses. Based on experience from medical dispensaries and recreational dispensaries in other States, it is anticipated that dispensaries in Illinois will be less than 7,000 square feet.

The following uses are involved with the manufacture or processing of cannabis. Businesses involved in the manufacturing and processing of materials, products and goods and are restricted to the G-I General Industrial or the L-I Light Industrial Districts. Special uses in these districts are generally uses that include outdoor activity, retail sales or services, or have other unique attributes.

1. *Craft Grower*. Facilities which grow and package cannabis for sale at a dispensary. A craft grower may share a premises with a processor or dispensary and may sell or distribute cannabis to another cannabis-related business. A facility for a Craft Grower may not exceed 14,000 square feet in floor area.
2. *Cultivation Center*. Facilities which cultivate, process, transport, and perform other necessary activities to provide cannabis and cannabis-infused products to Recreational Businesses. This use is permitted to be up to 210,000 square feet in size per location.
3. *Infuser*. A facility that directly incorporates cannabis or cannabis concentrate into a product.
4. *Processor*. A facility that extracts constituent chemicals or compounds to produce cannabis concentrate or incorporates cannabis or cannabis concentrate into a product.
5. *Transporter*. Transports cannabis on behalf of a licensed Recreational Business. This use would likely have a cannabis storage component on their premises.

Unless a unique parking requirement is established, dispensaries would require the same parking as Retail Goods and/or Service Businesses (1 space per 250 square feet of floor area). A survey of medical dispensary parking requirements indicates an average parking requirement of 1 space per 250 square feet of floor area.

### Possession and Consumption

The Act regulates possession quantities for recreational cannabis for adults over 21, as follows:

- 30 grams of raw cannabis (comparable to a generally full sandwich bag)
- 5 grams of cannabis product in concentrated form (such as creams)
- 500 mg or less of THC of cannabis-infused products (such as an edible)
- Home cultivation of up to five cannabis plants per household (for medical patients only)

The Act prohibits the use of cannabis on the grounds of any school; within motor vehicles (stopped or moving); and in any public place or knowingly close physical proximity to anyone under 21 years of age. Municipalities may not prohibit or more strictly regulate the lawful use of cannabis as set forth in the Act; however, the Act permits property owners to prohibit the use and growing of cannabis on their own properties. It will remain unlawful to consume cannabis, either for recreational or medical purposes, outdoors or in public spaces, defined as the following:

- Any place where a person could reasonably be expected to be observed by others.
- All parts of buildings owned in whole or in part or leased by a unit of local government.
- Does not include a private residence unless the private residence is used to provide licensed child care, foster care, or other similar social service care on the premises.

### Public Safety

The Act establishes regulations regarding recreational dispensary operations, including:

- Dispensaries may only operate between 6 A.M. and 10 P.M. (the Village could further restrict these hours).
- Dispensaries may only operate and sell cannabis when video surveillance equipment, point of sale equipment, and State's electronic verification system is operative, and there are two or more people working at a given time.
- Dispensaries may not sell any product containing alcohol (except for tinctures).
- Home delivery of cannabis is prohibited.

Driving under the influence of cannabis will continue to be illegal. The Act allows for use of roadside chemical tests or standardized field sobriety tests when conducting investigations of drivers suspected of driving under the influence of cannabis. The Village of Lombard has provided staff with research regarding the number of calls for police service at Medical Businesses. Lombard contacted 11 communities, including Addison, Naperville, and Oak Park; no community indicated that any Medical Business requested more than three calls for police service since the inception of the Pilot.

If have a licensed premises we would be able to pro-actively permit on-site consumption. We could establish an on-site consumption license should such an action be permitted.

### Taxation and Revenue Mechanisms

While financial impacts and revenue potential are not considered factors as to the appropriateness of potential land uses within the Village's Comprehensive Plan, staff felt that it was necessary to include a summary of the local taxation powers created by the Act due to their uniqueness relative to other general retail and service uses, as well as a revenue projection to better contextualize the sales capacity of Recreational Businesses.

Municipalities are empowered to levy a special local sales tax of up to 3.0% in addition to existing sales tax rates to the gross retail sales of recreational cannabis that occurs in their communities. For example, if a Recreational dispensary located in Burr Ridge generated \$1,000,000 in gross revenue, the Village would receive \$42,500 in sales tax (\$30,000 from the 3.0% special sales tax and \$12,500 from the local 1.25% sales tax, which presently exists). Local municipalities will not be restricted in how they are permitted to expend local sales tax revenues associated with the sale of recreational cannabis. Additionally, the Village will receive an annual payment from the State to assist in enforcing the Act regardless of whether a Recreational Business operates in the community. State and regional estimates typically assume that recreational marijuana sales will be higher in Illinois than other markets for recreational cannabis, such as Colorado, based on comparisons regarding population, income, tourism, and current patterns of usage. Staff has provided three examples of local sales tax generation based upon projections using data from Illinois, Colorado, and Washington State.

The first projection, performed by the DuPage Mayors and Managers Conference, assumes that the total demand in Illinois will "fit" into the limited number of dispensary licenses that will be granted by the State and forecasts **\$488,473** in local sales tax per dispensary.

The second projection uses the Illinois Economic Policy Institute’s (IEPI) estimation of a \$2 billion statewide recreational cannabis market by 2022. If all 240 retail licenses were issued and each establishment was operating at this time, this would equate to **\$354,167** in local sales tax per dispensary.

Finally, the State of Washington publishes detailed information regarding sales by individual suppliers and retailers. The State of Washington applies a 37 percent state excise tax and 5 percent local sales tax. Of the 387 active recreational dispensaries, the average dispensary generated \$2,750,000 in gross revenues, meaning that the average dispensary would generate **\$117,000** in tax revenue if it were located in Burr Ridge.

**State Licensing Timelines**

The State retained sole licensing authority of Recreational Businesses in the Act; the Village is not permitted to create a “cannabis license” which would function similarly to a liquor license. A three-phase rollout for the issuance of Recreational Business licenses was created to ensure that the Act’s implementation was orderly and equitable. Phase 1 permits existing Medical Businesses to receive a unique license for a Recreational dispensary. The Illinois Department of Agriculture has stated that they presently interpret the Act to restrict the locations of a Recreational dispensary to the Medical Business’ current location; however, the members of the Illinois General Assembly responsible for the Act’s introduction have said that they will be introducing a trailer bill in the fall Veto Session to allow Medical Businesses to open a Recreational dispensary at a separate location. Phase 2 permits an additional 75 Recreational dispensaries to be opened across the State, regardless of whether the applicant is affiliated with a Medical Business. Due to requirements set forth by the Act, 47 of these licenses must be located within the Chicago-Naperville-Elgin region as defined by the US Bureau of Labor Statistics; Burr Ridge is located within this area. Phase 3 will occur after a social equity study period occurs at the end of 2020, wherein the State may deem it necessary to issue up to 110 additional licenses for Recreational dispensaries in areas that are found to be underserved on the basis of economic equity. The following table shows the information discussed in this section with relevant timelines.

Phase	Potential Licensees	Application Open	Application Due	Grant Date	# of Licenses
1	Existing Medical Business	August 2019	March 2021	January 1, 2020	55
2	New Dispensaries^	October 2019	January 2020	May 1, 2020	75
<b>Social Equity Study Period – Early 2021</b>					
3	New Dispensaries	March 2021		December 2021	110
<b>TOTAL RECREATIONAL LICENSES</b>					<b>240</b>
^47 such licenses must locate in Chicago-Naperville-Elgin region as defined by the Bureau of Labor Statistics					

**Municipal Actions**

Many municipalities in the Chicagoland region have held similar hearings on recreational cannabis. A chart of all municipal actions on this matter is attached as Exhibit B.

**Public Comment**

Staff has received a two objections via email as well as some objections and support via phone calls. Plan Commissioner Luisa Hoch has also provided her perspective, which was included in the attachments.

### **Consideration of Potential Actions**

Staff requests direction regarding the questions posed on page 2 of the staff report, including any additional information that the Plan Commission requires to inform its recommendation.

Staff recommends that the uses and their legal definitions created by the Act be adopted as an amendment to Section XIV (Definitions) of the Zoning Ordinance for legal reference (Exhibit D).

### **Findings of Fact and Recommendation**

Staff requests direction from the Plan Commission as to a desired recommendation regarding amendments for Recreational Businesses. Based on the Plan Commission's recommendation, staff will prepare findings of fact. The findings of fact for a text amendment are limited to assessing whether the amendment is compatible with other standards of the Zoning Ordinance and if it fulfills the purpose and intent of the Zoning Ordinance.

The following is a list of questions that should be addressed in a Plan Commission recommendation:

- Which Recreational Businesses should be permitted or special uses?
- In which zoning district(s) should Recreational Businesses be located?
- Should the Village restrict hours beyond what the Act permits?
- Should minimum separation distances be required for Recreational Businesses?
- What parking requirements should be established for Recreational Businesses?
- How should the Village regulate on-site consumption?

Staff also requests direction from the Plan Commission as to whether amendments regarding Medical Businesses are desired. It is possible that an entity may attempt to operate a joint Medical/Recreational Business in the future; the Zoning Ordinance currently treats these two uses as mutually exclusive. If amendments are desired, staff will prepare findings of fact; no action will be necessary if no amendments are desired.

### **Appendix**

Exhibit A – ICMA and Planning Magazine Publications

Exhibit B – Neighboring Municipal Actions

Exhibit C – Public Comment

Exhibit D – Use Definitions

Exhibit E – Petitioner Materials