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OFFICE OF THE
CORPORATION COUNSEL

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**NOTICE OF MEETING
of the
JUDICIARY COMMITTEE OF THE
BOARD OF TRUSTEES OF THE VILLAGE OF WILMETTE**

**Friday, October 18, 2019 at 11:00 A.M.
Training Room – Second Floor of Wilmette Village Hall
1200 Wilmette Avenue, Wilmette, Illinois**

AGENDA

- I. Call to Order.**
- II. Approval of Minutes.**
Minutes of the Judiciary Committee meeting of March 8, 2019.
- III. Public Hearing: Review and discussion of amendments to the Zoning Ordinance regarding Cannabis Business Establishments.**
- IV. Discussion of amendments to the Village Code in regards to Cannabis regulations and related provisions.**
- V. New Business.**
- VI. Public Comment.**
- VII. Adjournment.**

IF YOU ARE A PERSON WITH A DISABILITY AND NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN AND/OR ATTEND A VILLAGE OF WILMETTE PUBLIC MEETING, PLEASE NOTIFY THE VILLAGE MANAGER'S OFFICE AT (847) 853-7509 OR TDD (847) 853-7634 AS SOON AS POSSIBLE.

**MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE OF THE
BOARD OF TRUSTEES OF THE VILLAGE OF WILMETTE, FRIDAY,
MARCH 8, 2019 AT 8:30 A.M. IN THE TRAINING ROOM, SECOND FLOOR,
WILMETTE VILLAGE HALL, 1200 WILMETTE AVENUE, WILMETTE, IL 60091**

Members Present: Trustee Senta Plunkett, Chair
Trustee George Pearce
Trustee Julie Wolf

Staff Present: Jeffrey Stein, Corporation Counsel

Guests Present: Nick Hynes
Luke Cholodecki
Mike Cookaszian

I. Call to Order.

Trustee Plunkett called the meeting to order at 8:37 a.m. Committee members Plunkett, Pearce and Wolf were present.

II. Approval of Minutes: Judiciary Committee Meeting of November 13, 2018.

Trustee Plunkett directed the Committee’s attention to the draft minutes of the Judiciary Committee meeting of November 13, 2018.

Trustee Wolf moved that the Committee approve the minutes, seconded by Trustee Pearce.

No further discussion occurred on the motion. Upon a call of the roll the following voted:

Ayes: Trustees Plunkett, Pearce and Wolf.

Nays: None.

The motion carried.

I. Application of 1167 Wilmette Restaurant, LLC d/b/a Pescadero Seafood & Oyster Bar for a Class C-1 Liquor License.

Trustee Plunkett moved to recommend approval of the application of 1167 Wilmette Restaurant, LLC d/b/a Pescadero Seafood & Oyster Bar for a Class C-1 Liquor License, seconded by Trustee Pearce.

Nick Hynes, applicant, said they were applying for a Class C-1 liquor license which would allow them to sell alcohol as a restaurant with a bar and also

allow them to sell wine for offsite consumption. He noted that their bartenders are all Bassett trained.

Trustee Pearce asked if food and wine would be delivered for those requesting it.

Corporation Counsel Jeffrey Stein said they would be able to deliver wine with the food order if the person delivering is over 21 and the person receiving the wine is over 21 with photo identification for proof of age.

Mr. Stein also noted that since the Village Board cancelled the March 26, 2019 Village Board meeting, the applicant has asked that the Ordinance granting the request be introduced and adopted at the same meeting. He said since the applicant operates another restaurant in the Village with no issues, President Bielinski was in favor of this request.

Trustee Pearce moved to recommend granting a Class C-1 liquor license to 1167 Wilmette Restaurant, LLC d/b/a Pescadero Seafood & Oyster Bar, seconded by Trustee Wolf.

No further discussion occurred on the motion. Upon a call of the roll the following voted:

Ayes Trustees Plunkett, Pearce and Wolf.

Nays: None.

The motion carried.

- II. Discussion of Ordinance #2019-O-19 republishing the Code of Ordinances of the Village of Wilmette; providing for the repeal of certain ordinances not included therein; providing for the manner of amending such Code; and providing when such Code and this Ordinance shall become effective.

Trustee Plunkett moved to recommend approval of the new Village Code with any changes that were agreed upon in the discussion. The motion was seconded by Trustee Wolf.

Corporation Counsel Stein stated that a significant majority of the changes were organizational and had no language changes to the code. The other changes were more to clear up inconsistencies within the code, or amend the code to reflect existing policy or as required by law.

Stein stated that the reason for the changes was because the Village decided to go with a new codifier that has an easier to use and more robust website where the Village Code will be housed.

Stein discussed the substantive changes. Trustee Plunkett had questions about the attendance of non-member trustees at committees. Stein explained that under the Open Meetings Act it would be permissible only for

that non-member Trustee to attend a meeting to observe but not participate. There was a ruling from the AG that made this permissive but also warned that if there was any participation by a majority of a quorum of another board then there could be a violation of the Open Meetings Act. Stein also explained that the Code update was to protect the Village and the Trustees themselves from violating the OMA.

Trustee Pearce inquired about the removal of a commissioner from a board or commission without cause. Stein explained that is the current state of the law. Pearce asked if there was an appeal process. Stein stated that would likely have to be one for the non-statutory commissions that was similar to the state statutes, but that process could be changed. Trustee Pearce recommended that a process be made that is an appeal is requested, the process would allow for a hearing before the Village Board and a supermajority be needed to overturn the removal.

Other recommend changes were discussed and explained by Corporation Counsel Stein.

No further discussion occurred on the motion. Upon a call of the roll the following voted:

Ayes Trustees Plunkett, Pearce and Wolf.

Nays: None.

The motion carried.

IV. Public Comment

None.

V. New Business

VI. Adjournment

Trustee Pearce moved, seconded by Trustee Wolf to adjourn. Upon a voice vote, the motion passed unanimously.

Trustee Plunkett declared the meeting adjourned at 9:35 a.m.

Respectfully Submitted,

Jeffrey Stein,
Corporation Counsel



Judiciary Committee Memorandum

MEETING DATE: October 18, 2019

TO: Village Board Judiciary Committee

SUBJECTS: Cannabis Regulations

FROM: [Jeffrey M. Stein](#), Corporation Counsel

BUDGET IMPACT: None

Background

At the September 24, 2019 Village Board meeting, the Village Board voted unanimously to refer all aspects of cannabis regulation to the Judiciary Committee.

The Judiciary Committee will have two items of discussion on its agenda:

1. Since the Village must amend its Zoning Code, a public hearing is scheduled for this meeting. The only necessary discussion points for the public hearing are to add the definitions provided by the State's Cannabis Regulation and Tax Act ("Act") into the Zoning Ordinance and the moratorium of such uses.
2. The next agenda item will be the discussion of non-zoning aspects of the cannabis regulations, which includes the taxation component of the ordinance and the regulatory aspects of the ordinance.

Since the time of its introduction on September 24, 2019, the Corporation Counsel has received requests from Trustee Kennedy for modifications to ordinance #2019-O-63 An Ordinance Amending Cannabis Regulations and Creating a Tax for the Retail Sale of Cannabis; Amending the Zoning Code to Include Cannabis Business Establishments; and Establishing a Moratorium on Cannabis Business Establishments.

Discussion

Public Hearing Discussion. The Committee will discuss during a public hearing the proposed amendments to the Zoning Ordinance, which insert the Cannabis business establishment definitions from the Act into the Zoning Ordinance. Doing so would provide a clear definition of the specific uses now created by the Act. The Corporation Counsel will make part of the record the fact that these new uses will not be permitted or special uses in the Zoning Ordinance as part of the moratorium currently under consideration.

Remaining Village Code Regulations Discussion. The Committee will also be asked to discuss the amendments to the remaining portions of the Village Code that relate to cannabis possession and use, and taxation of any sales of cannabis should such sales ever be allowed in the Village. Trustee Kennedy has made suggested modifications that affect the substance of those regulations, which are as follows:

1. Paraphernalia. Trustee Kennedy raised a concern that the draft ordinance removed possession of paraphernalia as a Code violation. As a significant amount of items that were considered paraphernalia, are no longer going to be considered as such, the Corporation Counsel removed the possession of such items as a violation from the Code. The Corporation Counsel did retain the restriction that such items may not be sold within the Village, but merely possessing them would no longer be a local code violation. The Village's Police Department practice has been to charge paraphernalia when there is a measurable amount of residue (or greater) of an illegal substance in the paraphernalia. As cannabis in many situations will no longer be considered an illegal substance, this left only those controlled substances that are to be charged as felonies. As such, in those situations where the Police Department encounters a case where an individual has paraphernalia with trace amounts of cocaine, heroin, methamphetamine, etc., a felony for possession of a controlled substance would have to be charged and prosecuted by the Cook County State's Attorney's Office. Any local charges would then no longer be charged as a matter of practical criminal procedure. In such cases, a state misdemeanor or felony for the paraphernalia would be charged in conjunction with the controlled substance charge which would also be prosecuted by the Cook County State's Attorney's Office.

While this provision was rarely used (and will be even less used after January 1st), Trustee Kennedy suggested that this be placed back into the Code as a violation to have just in case a situation arises where there could be a local charge. The Corporation Counsel and the Police Department agree with Trustee Kennedy's recommendation and have placed this provision back into the Code.

2. Insertion of Public Place Definition. Trustee Kennedy requested that the cross-reference of the definition of "public place" found in the Act be included verbatim into the Village Code. The cross-reference was included in the originally proposed ordinance without the verbatim language to ensure that definitions, as well as the others, would be automatically amended should the state amend that definition in the Act. By placing the verbatim language in the Code, if the Act were to be amended, it would require a new act of legislation by the Village Board to keep that definition consistent with the Act. The consistency of that definition is likely required as the Village is restricted, even with its home rule powers, to enact anything contrary to the Act's allowance of the possession of cannabis.

The Corporation Counsel added the language to the ordinance per the request of Trustee Kennedy, but the Committee should consider maintaining the language as originally drafted to ensure consistency with the Act.

The remaining provisions of the draft ordinance remain unaltered from its introduction and the ordinance, along with the previously published memoranda on this subject are attached for your review.

Documents Attached

1. August 22, 2019 Memorandum
2. September 24, 2019 Memorandum
3. Ordinance No. 2019-O-63:: An Ordinance Amending Cannabis Regulations and Creating a Tax for the Retail Sale of Cannabis; Amending the Zoning Code to Include Cannabis Business Establishments; and Establishing a Moratorium on Cannabis Business Establishments



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OFFICE OF THE
CORPORATION COUNSEL

Date: August 22, 2019
To: Village President and Board of Trustees
From: [Jeffrey M. Stein](#), Corporation Counsel
Subject: CANNABIS REGULATION AND TAX ACT

INTRODUCTION

The State of Illinois' newly adopted Cannabis Regulation and Tax Act (410 ILCS 705 *et seq.*) ("Act") will take effect on January 1, 2020. The new law allows for the lawful possession, sale and recreational consumption of cannabis throughout Illinois. While municipalities, even Home Rule Municipalities, have been limited in what they can regulate in regards to cannabis sales, possession, and use, the legislature did leave some matters of local concern to be addressed by the respective municipalities. This memorandum is intended to provide a brief summary of the new law and provide a series of decision points and the timeframes for such decisions that the Village Board will need to make in regards to local regulation of cannabis sale, possession, and use.

SUMMARY

The Act legalizes the sale, possession and use of cannabis by people over the age of 21 for recreation (not just medical) purposes. Similar to Medical Marijuana (which was enacted by the Compassionate Use of Medical Cannabis Pilot Program Act ("Medical Marijuana Act")), the Act provides for both the growth and distribution of cannabis which will be licensed and regulated by the State. The Act also provided for statewide taxation of the wholesale and retail sale of cannabis and further allows for the local taxation of the retail sale of cannabis. A big difference between the Act and the Medical Marijuana Act is the express authorization of municipalities to restrict or otherwise regulate

“Cannabis business establishments” through zoning controls and other regulatory ordinances.

POSSESSION AND USE OF CANNABIS

What is now lawful.

The Act authorizes Illinois residents over the age of 21 to purchase and possess up to:

1. 30 grams of cannabis (in its raw form),
2. 5 grams of cannabis concentrate, or
3. cannabis infused products containing up to 500 milligrams of THC.

All cannabis products must be purchased from a State licensed facility, except Medical Cannabis patients may grow up to five cannabis plants that are more than five inches tall, per household, for their own personal cannabis consumption (and presumably the consumption of another Medical Cannabis patient).

The Act does not allow the unregulated use of cannabis consumption. There are still many restrictions on where you can purchase cannabis, the potency of the cannabis and where one can consume cannabis.

What is still prohibited.

While the possession and use of cannabis is now lawful, it is still a heavily regulated activity in many ways similar to the smoking of tobacco or consumption of alcohol. There is still a series of prohibited activities that would be deemed either local violations (Administrative Adjudication) or criminal activity (Circuit Court). The list of prohibitions provided below is intended to inform the Village Board of the most relevant prohibitions and is not an all-inclusive list as provided for in the Act.

The possession and use of cannabis is prohibited:

- on school grounds or a school bus;
- in a vehicle not open to the public unless the cannabis is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving;

The use of cannabis is prohibited:

- in any public place;

Such places are defined as “any place where a person could reasonably be expected to be observed by others.” “Public place” includes all parts of buildings owned in whole or in part, or leased, by the State or a unit of local government. “Public place” does not include a private residence unless the private residence

is used to provide licensed childcare, foster care, or other similar social service care on the premises;

- in any motor vehicle;
- when knowingly used in close physical proximity to anyone under 21 years of age who is not a registered medical cannabis patient under the Compassionate Use of Medical Cannabis Pilot Program Act;
- in any place where smoking is prohibited under the Smoke Free Illinois Act (includes most commercial businesses, offices, stores, restaurants, bars, government buildings, parks);
- while operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while using or under the influence of cannabis;
- by a law enforcement officer, corrections officer, probation officer, or firefighter while on duty;
- by a person who has a school bus permit or a Commercial Driver's License while on duty;
- when undertaking any task under the influence of cannabis when doing so would constitute negligence, professional malpractice, or professional misconduct;

Furthermore, no person may transfer cannabis or facilitate the use of cannabis to any other person not authorized by the Act or Medical Marijuana Act.

SALE OF CANNABIS

While the State has preempted a majority of the regulatory field of cannabis cultivation and dispensing, the State did reserve some regulatory powers to local government. As part of the State's regulations, the Act creates new categories of different types of cultivators, dispensers and others, which are collectively defined as "Cannabis business establishments."

The following definitions are included in the Act:

"Cannabis business establishment" means a cultivation center, craft grower, processing organization, dispensing organization, or transporting organization.

"Craft grower" means a facility operated by an organization or business that is licensed by the Department of Agriculture to cultivate, dry, cure, and package cannabis and perform other necessary activities to make cannabis available for sale at a dispensing organization or use at a processing organization. A craft grower may contain up to 5,000 square feet of canopy space on its premises for plants in the flowering state. The

Department of Agriculture may authorize an increase or decrease of flowering stage cultivation space in increments of 3,000 square feet by rule based on market need, craft grower capacity, and the licensee's history of compliance or noncompliance, with a maximum space of 14,000 square feet for cultivating plants in the flowering stage, which must be cultivated in all stages of growth in an enclosed and secure area. A craft grower may share premises with a processing organization or a dispensing organization, or both, provided each licensee stores currency and cannabis or cannabis-infused products in a separate secured vault to which the other licensee does not have access or all licensees sharing a vault share more than 50% of the same ownership.

"Cultivation center" means a facility operated by an organization or business that is licensed by the Department of Agriculture to cultivate, process, transport (unless otherwise limited by this Act), and perform other necessary activities to provide cannabis and cannabis-infused products to cannabis business establishments.

"Dispensary" means a facility operated by a dispensing organization at which activities licensed by this Act may occur.

"Dispensing organization" means a facility operated by an organization or business that is licensed by the Department of Financial and Professional Regulation to acquire cannabis from a cultivation center, craft grower, processing organization, or another dispensary for the purpose of selling or dispensing cannabis, cannabis-infused products, cannabis seeds, paraphernalia, or related supplies under this Act to purchasers or to qualified registered medical cannabis patients and caregivers. As used in this Act, dispensary organization shall include a registered medical cannabis organization as defined in the Compassionate Use of Medical Cannabis Pilot Program Act or its successor Act that has obtained an Early Approval Adult Use Dispensing Organization License.

"Infuser organization" or "infuser" means a facility operated by an organization or business that is licensed by the Department of Agriculture to directly incorporate cannabis or cannabis concentrate into a product formulation to produce a cannabis-infused product.

"Processing organization" or "processor" means a facility operated by an organization or business that is licensed by the Department of Agriculture to either extract constituent chemicals or compounds to produce cannabis concentrate or incorporate cannabis or cannabis concentrate into a product formulation to produce a cannabis product.

"Transporting organization" or "transporter" means an organization or business that is licensed by the Department of Agriculture to transport cannabis on behalf of a cannabis business establishment or a community college licensed under the Community College Cannabis Vocational Training Pilot Program.

State Licensing

The State will be responsible for the general licensing of all Cannabis business establishments, much in the same way it is under the Medical Marijuana Act. Specific departments of the State will create rules and regulations for the different types of Cannabis business establishments. Local governments may not enter the field of licensing or regulating Cannabis business establishments, except as otherwise provided for in the Act (discussed below).

Per the Medical Marijuana Act, there are 55 cannabis dispensaries and 20 cultivation centers currently authorized under the Medical Marijuana Act. No such facilities are located within the Village (such facilities are Special Uses in the GC-1 District). Each of those facilities can apply for authorization, prior to other new establishments applying, to convert or expand their medical operations to the recreational marijuana markets.

In addition to the existing Medical Marijuana dispensaries currently licensed by the State, the Illinois Department of Financial and Professional Regulation may award:

1. no more than 75 conditional Dispensary licenses by 2020;
2. no more than 110 additional Dispensary licenses by 2021; and
3. no more than 500 total dispensary licenses by 2022.

In addition to the dispensaries, the State will authorize:

1. 50 Cultivators;
2. 100 Craft Growers;
3. 100 Infusers.

Local Regulations

Local governments are expressly authorized to regulate Cannabis business establishments in two separate areas: zoning and general business regulation.

Per the Act, the Village can prohibit entirely or otherwise significantly restrict the locations of where a Cannabis business establishment may be located within its jurisdiction through its zoning powers. Furthermore, the Village may allow one type of Cannabis business establishment over another (e.g. dispensaries are prohibited but cultivators are allowed). An amendment to the Zoning Ordinance will be needed prior to January 1, 2020, no matter if the Village completely prohibits such uses or if it wants to allow such uses and regulate them.

If the Village were to allow one or more types of Cannabis business establishments within its jurisdiction, the Village may:

1. determine if such uses were to be permitted or special uses;
2. determine in what districts such uses could be located;
3. reasonably regulate the time, place, manner, of their business operations that do not conflict with the Act may be enacted. The Act already covers many regulations such as:

- a. the hours of operations for a dispensary are from 6:00 a.m. to 10:00 p.m. – it is unknown if the hours of operation can be reduced by the Village;
 - b. drive-through windows are not allowed;
 - c. security and lighting plans must be approved by the State and must be operational while open for business;
 - d. there must be at least two employees working when the facility is open for business;
4. limit the total number of such establishments allowed to be operating within the Village through the special use process; and
 5. create the minimum distances such establishments may be from other types of uses (e.g. schools, parks, playgrounds).

In addition to zoning regulations, the Village may reasonably regulate those facilities that allow for retail sale and/or on premise use of cannabis at those locations. One area that the Village can regulate entirely is the on-site consumption of cannabis at Cannabis business establishments. The Village may completely restrict such consumption or otherwise place reasonable limitations upon such consumption (time, place, manner restrictions).

The Village may also enforce general business registration requirements and compliance of building codes for any retail operation open to the public, but may not enact cannabis specific regulations that are already provided for by the State.

TAXATION

Sales by cultivators, craft growers, infusers, and dispensaries can be taxed by the State. The State's cultivation tax is 7% and the retail excise tax will be between 10% and 25% depending upon the specific products THC level. The State will contribute 8% of its collected taxes to the Local Government Distributive Fund ("LGDF") for the purpose of crime prevention, law enforcement training, and drug interdiction.

The Village, should it allow retail cannabis stores, may impose a tax up to 3% on the sales to the consumer. This tax, which can only apply to retail sale of cannabis and not the cultivation of the same, will need to be implemented by ordinance.

NEXT STEPS

Code Changes Required

Regardless of the Village's decision on the policy of whether to allow all or some of the Cannabis business establishments created by the Act, there are a number of changes to the Village Code that are needed.

The following amendments are recommended to take place prior to January 1, 2020:

1. Amend the Zoning Ordinance to include the definitions of each type of Cannabis business establishment.

2. Amend the Village's own Smoke Free Ordinance as well as the Miscellaneous Offenses sections of the Village Code to make the Village Code consistent with the restrictions provided for in the Act and the Village's current regulation of the use of tobacco.
3. Adopt and enact the taxation ordinance, even if such cannabis uses are to be prohibited in the Village, to ensure the validity of such a tax in the future should the policy change. The Village would presumably be "grandfathered" in if there were any changes by the General Assembly to the local taxation element of the Act.

Decision Points Needed

The Village Board will need to determine the ultimate question of whether or not to allow some or any of the Cannabis business establishments to be allowed to operate within the Village.

If that answer to that ultimate question is "no", some simple amendments to the Zoning Ordinance would be needed to formalize this prohibition.

If that answer to that ultimate question is "yes", the following policy determinations will need to be made:

1. What types of Cannabis business establishments would be permitted;
2. What zoning district would they be allowed in;
3. Would they be permitted or special uses;
4. At what rate would they be taxed (0% to 3%);
5. What special regulations would be appropriate (hours of operations, proximity to other types of uses (e.g. schools, parks, playgrounds)) for the allowed Cannabis business establishments.

Depending upon the Village Board's desire to make such policy determinations, some actions (specifically those discussed above in the Code Changes Required) and either a moratorium on this matter (as referenced in the Village Manager's Cover Memo) or a final policy determination will need to be enacted prior to January 1,

Judiciary Committee



Law Department

SUBJECTS: Appointment of Special Zoning Committee – Village Code Updates:
Technical Amendments to the Village’s Zoning Code

An Ordinance Amending Cannabis Regulations and Creating a Tax for the Retail Sale of Cannabis; Amending the Zoning Code to Include Cannabis Business Establishments; and Establishing a Moratorium on Cannabis Business Establishments

MEETING DATE: Appointment of Special Zoning Committee– September 24, 2019
Ordinance Introduction – September 24, 2019
Ordinance Approval – October 22, 2019

FROM: [Jeffrey M. Stein](#), Corporation Counsel

BUDGET IMPACT: None

Recommended Motions

Appointment of the Judiciary Committee sitting as a Special Zoning Committee to review certain technical amendments to the Village’s Zoning Code in relation to Cannabis Business Establishments and a moratorium upon such uses.

Move to introduce and subsequently adopt Ordinance No. 2019-O-63: An Ordinance Amending Cannabis Regulations and Creating a Tax for the Retail Sale of Cannabis; Amending the Zoning Code to Include Cannabis Business Establishments; and Establishing a Moratorium on Cannabis Business Establishments

Background

At the September 10, 2019 Village Board meeting, the Village President directed the Village Staff to place on the next Village Board agenda the necessary amendments to the Village Code in relation to Cannabis Business Establishments, as well as, provide a moratorium ordinance for such uses until an advisory referendum can be voted upon at the November 2020 election.

Discussion

APPOINTMENT OF JUDICIARY COMMITTEE

As provided for in the Village Manager's and the Corporation Counsel's Memoranda on this subject both dated August 22, 2019, staff recommended that the Judiciary Committee be appointed as a Special Zoning Committee to hold the public hearing for the cannabis related technical amendments needed to the Village's Zoning Ordinance. The text amendments proposed are only to add the definitions of Cannabis Business Establishments – as defined in the State's Cannabis Regulation and Tax Act ("Act") – to the Zoning Code. Since the inclusion of these definitions is a text amendment to the Zoning Ordinance, a public hearing is necessary.

At the August 27, 2019 Village Board meeting, the Village Board indicated that the multiple actions required or recommended in regards to cannabis regulation should be consolidated as much as possible. Pursuant to that direction, as well as the direction provided by President Bielinski, the Corporation Counsel has consolidated all aspects of the cannabis regulations into one draft ordinance. The Judiciary Committee will meet prior to October 22, 2019, to discuss all aspects of cannabis regulations.

ORDINANCE TO BE INTRODUCED

The attached draft ordinance submitted for introduction covers the following cannabis related topics:

1. Definitions included into the Zoning Ordinance

As mentioned above, the definitions of Cannabis Business Establishments as provided by the Act into the Zoning Ordinance are a necessary component whether the Village allows or restricts cannabis uses within the Village. These additions are necessary as the Act specifically defines these uses. Including these definitions into the Zoning Ordinance would clearly distinguish such uses from the current medical cannabis uses. Any vagueness argument or misunderstanding by an applicant would be clearly curtailed by the inclusion of these definitions and thus is a prudent approach to ensure the Village retains control over retail cannabis to the fullest extent possible under the Act.

2. Cannabis Tax

The adoption of the tax now, even if such cannabis uses are to be prohibited in the Village, would be the best method to ensure the validity of such a tax in the future should the policy change. The Village would presumably be "grandfathered" in if there were any changes by the State to the local taxation element of the Act, similar to how tobacco taxation is currently provided for in State statute. While this is not bulletproof should the State decide to remove the taxation component, it is the best option the Village has before it at this time to ensure such a tax can be implemented.

3. Cannabis Regulations

The ordinance amends and revamps the Village's current cannabis regulations and restrictions. The changes to the ordinance clarify that it is still currently illegal to sell, deliver, distribute, or consume cannabis in public within the Village. These changes, however, include the required exemptions to the possession of cannabis and home growth of medical cannabis as required and preempted by the Act.

4. Moratorium

The ordinance also provides for a moratorium on any new Cannabis Business Establishment operating within the Village. The purpose for a moratorium in this matter is to keep the status quo while the Village receives the desired public input in making its final decision about the allowance or restriction of Cannabis Business Establishments within Wilmette. The moratorium clearly indicates to potential cannabis distributors that the Village is not currently allowing such uses, but it may (or may not) in the future.

Per President Bielinski, the moratorium's express justification is to allow for the public to vote in a referendum on the placement of a cannabis dispensary within the Village at the November 2020 election. The moratorium is also justified by a current lack of administrative rules to be imposed by the State that could have an impact upon local regulations.

The moratorium is set to expire automatically on June 30, 2021, which would allow the Village the necessary time to properly discuss and determine the policy based upon the results of the referendum and the final administrative rules. Should the policy be that a cannabis dispensary be allowed, the Village would have enough time to hold public hearings to determine the necessary changes to the Zoning Ordinance. Should the policy be to continue to prohibit the retail sale of cannabis, such an ordinance will be presented to the Village Board at that time.

ORDINANCE ADOPTION

As a public hearing for the text amendments is required and cannot be set until 15 days after published notice, the adoption of the introduced cannabis ordinance will be set for the last meeting in October.

For a more detailed explanation of the code changes recommended and incorporated into the attached ordinance, please see the attached memorandum from the Corporation Counsel dated August 22, 2019.

Budget Impact

There is no impact to the budget.

Documents Attached

1. Ordinance No. 2019-O-63: An Ordinance Amending Cannabis Regulations and Creating a Tax for the Retail Sale of Cannabis; Amending the Zoning Code to Include Cannabis Business Establishments; and Establishing a Moratorium on Cannabis Business Establishments

ORDINANCE NO. 2019-O-63

**AN ORDINANCE AMENDING CANNABIS REGULATIONS AND CREATING
A TAX FOR THE RETAIL SALE OF CANNABIS; AMENDING THE ZONING
CODE TO INCLUDE CANNABIS BUSINESS ESTABLISHMENTS; AND
ESTABLISHING A MORATORIUM ON CANNABIS BUSINESS
ESTABLISHMENTS**

WHEREAS, Village of Wilmette, Cook County, Illinois (hereinafter the “Village”), is a home rule municipal corporation as provided in Article VII, Section 6 of the 1970 Constitution of the State of Illinois and, pursuant to said constitutional authority, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, pursuant to the Illinois Cannabis Regulation and Tax Act (410 ILCS 705/1-1 *et. seq.*)(“Act”), which is set to take effect on January 1, 2020, individuals over the age of 21 will be allowed to lawfully possess and consume cannabis; and

WHEREAS, pursuant to the Act, there are specific limitations upon the consumption of cannabis; and

WHEREAS, pursuant to the Act, the Village may regulate the consumption of cannabis in public places; and

WHEREAS, the amendments to the Village Code provided for by this Ordinance are necessary technical amendments to clarify what activity shall remain unlawful; and

WHEREAS, the creation of a tax for cannabis retail sales is adopted pursuant to the provisions of the Illinois Municipal Cannabis Retailers’ Occupation Tax Law, 65 ILCS 5/11-8-22 *et seq.* (“Tax Act”); and

WHEREAS, this ordinance is intended to impose the tax authorized by the Tax Act providing for a municipal cannabis retailers’ occupation tax which will be collected by the Illinois Department of Revenue; and

WHEREAS, pursuant to the Act, the Village may allow, prohibit or otherwise limit, the location of Cannabis Business Establishments and Infusers (collectively “Cannabis Business Establishments”) within the Village’s corporate boundaries; and

WHEREAS, this ordinance is intended to make technical changes to the Village of Wilmette Zoning Ordinance (“Zoning Ordinance”) by specifically including the definitions of the Cannabis Business Establishments expressly provided for in the Act; and

WHEREAS, the Act requires various state agencies to adopt administrative rules for the registration and oversight of Cannabis Business Establishments; and

WHEREAS, those administrative rules have yet to be adopted; and

WHEREAS, the Village President and Board of Trustees (collectively “Village Board”) has determined that the zoning of any Cannabis Business Establishments before the adoption of the state’s administrative rules may result in conflicts between such rules and local ordinances, which reasonably regulate the cultivation, dispensing, processing, transporting and infusing of recreational cannabis within the Village; and

WHEREAS, the Village Board desires to carefully review and consider the impacts that recreational cannabis-related uses have on the public health, safety, comfort, morals and welfare; and

WHEREAS, the Village’s evaluation process requires public input; and

WHEREAS, the Village Board has determined that an advisory referendum to be placed on the November 2020 election ballot will be one effective method for obtaining public input; and

WHEREAS, the Village staff is directed to place a resolution authorizing such an advisory referendum, in compliance with the Illinois Election Code, at the appropriate Village Board

meeting to ensure the placement of the proposed referendum upon the ballot at the November 2020 election; and

WHEREAS, to preserve the status quo while the Village obtains the public input necessary for its evaluation process, the Village Board desires to enforce a moratorium on Cannabis Business Establishments which is not expected to last past the date of June 30, 2021; and

WHEREAS, nothing in this ordinance shall be deemed to conflict with or in any way impede or impact the provisions set forth in the Wilmette Village Code pertaining to any provisions enacted pursuant to Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/1 *et. seq.*); and

WHEREAS, the Judiciary Committee sitting as a Special Zoning Committee, after giving due and proper notice as required by law, held a public hearing on October 18, 2019 to discuss technical amendments of the Zoning Ordinance in relation to Cannabis Business Establishments and the proposed moratorium of the same, thereafter filed with the President and Board of Trustees of the Village a report accompanied by findings of fact specifying the reasons for amending the Zoning Ordinance to make the amendments; and

WHEREAS, the Village Board finds that the below amendments to the Zoning Ordinance improve the effectiveness of the Zoning Ordinance, are in keeping with the spirit of the Zoning Ordinance, meet the standards for amendments and promote the public health, safety, morals and welfare, and are otherwise in the public interest.

WHEREAS, the Village Board finds that the remaining below amendments and the moratorium promote the public health, safety, morals and welfare, and are otherwise in the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Wilmette, Cook County, Illinois, in the exercise of its home rule power as follows:

SECTION 1: The foregoing findings and recitals, and each of them, are hereby adopted as Section 1 of this Ordinance and are incorporated by reference as if set forth verbatim herein.

SECTION 2: The Wilmette Village Code, as amended, is further amended in Chapter 12, Article XIII, Marijuana and Drug Paraphernalia by deleting the text of said Article XIII shown in strikethrough type below and inserting the new text shown in underlined bold type below in the manner and form shown below so that said Article XIII shall hereafter read as follows:

ARTICLE XIII. - MARIJUANA AND DRUG PARAPHERNALIA

Sec. 12-350. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cannabis shall have the meaning ascribed to it in **the Cannabis Regulation and Tax Act** ~~section 3 of the Cannabis Control Act (ILCS ch. 720, act 550, § 1 et seq.)~~ as if that definition were incorporated herein.

Controlled substance shall have the meaning ascribed to it in section 102 of the Illinois Controlled Substances Act as if that definition were incorporated herein (ILCS ch. 720, act 570, § 101 et seq.).

Deliver or delivery means the actual, constructive or attempted transfer of possession of cannabis or a controlled substance, with or without consideration, whether or not there is an agency relationship.

Drug paraphernalia means all equipment, products and materials of any kind which are peculiar to and marketed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body cannabis or a controlled substance in violation of the Cannabis Control Act or the Illinois Controlled Substances Act. It includes, but is not limited to:

- (1) Kits peculiar to and marketed for use in manufacturing, compounding, converting, producing, processing or preparing cannabis or a controlled substance;

- (2) Isomerization devices peculiar to and marketed for use in increasing the potency of any species of plant which contains cannabis or a controlled substance;
- (3) Testing equipment peculiar to and marketed for private home use in identifying or in analyzing the strength, effectiveness or purity of cannabis or controlled substances;
- (4) Diluents and adulterants peculiar to and marketed for cutting cannabis or a controlled substance by private persons;
- (5) Objects peculiar to and marketed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil or other controlled substances into the human body including, where applicable, the following items:
 - a. Water pipes;
 - b. Carburetion tubes and devices;
 - c. Smoking and carburetion masks;
 - d. Miniature cocaine spoons and cocaine vials;
 - e. Carburetor pipes;
 - f. Electric pipes;
 - g. Air-driven pipes;
 - h. Chillums;
 - i. Bongs;
 - j. Ice pipes or chillers;
- (6) Any item whose purpose, as announced or described by the seller, is for use in violation of this article.

Methamphetamine shall have the meaning ascribed to it in section 10 of the Methamphetamine Control and Community Protection Act (720 ILCS 646/10).

Sec. 12-351. - Offense.

(a) It shall be unlawful for any person to grow, possess, sell, give away, barter, deliver, exchange, distribute, or administer any marijuana in the village. **It shall be unlawful for any retail establishment or similar use, even when licensed by the State of the Illinois under the Cannabis Regulation and Tax Act 705/1-1 et. seq., to sell Cannabis at retail in the village.**

(b) **It shall not be unlawful** ~~This section shall not apply when the growth, possession, sale, delivery or distribution of cannabis is done so in compliance with the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/1 et. seq~~ **or when the growth and possession of cannabis is done so in compliance with the Cannabis Regulation and Tax Act, 705/1-1 et. seq.**

Sec. 12-352. - Penalty.

Any person who violates section 12-351 shall be fined **in the manner provided for in Section 2-1305** ~~not less than \$200.00 nor more than \$750.00.~~

SECTION 3: The Wilmette Village Code, as amended, is further amended in Chapter 12, Article XIV, Prohibition and Penalty by deleting the text of said Article XIV shown in strikethrough type below and inserting the new text shown in underlined bold type below in the manner and form shown below so that said Article XIV shall hereafter read as follows:

ARTICLE XIV. - PROHIBITION AND PENALTY

Sec. 12-378. - Offense.

(a) Any person who keeps for sale, offers for sale, sells or delivers for any commercial consideration any item which that person knows, or under all of the circumstances reasonably should have known, to be drug paraphernalia, commits a violation of this Code ~~for which a fine of not less than \$250.00 and not more than \$1,000.00 shall be imposed for each such item.~~

(b) Any person who possesses an item of drug paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing cannabis, a controlled substance, or methamphetamine into the human body, or under all of the circumstances reasonably should have known, to be drug paraphernalia, commits a violation of this Code ~~for which a fine of not less than \$50.00 and not more than \$750.00 shall be imposed for each such item.~~

(c) A person, corporation, partnership, association or other entity who violates this article shall be fined in the manner provided for in Section 2-1305.

~~(1) This section does not apply to a person who is legally authorized to possess hypodermic syringes or needles under the Hypodermic Syringes and Needles Act.~~

~~(e) This section shall not apply when the possession, sale, delivery or distribution of paraphernalia is done so in compliance with the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/1 et seq.~~

Sec. 12-379. - Public nuisance.

Any store, place or premises from which or in which any item of drug paraphernalia is kept for sale, offered for sale, sold or delivered for any commercial consideration is declared to be a public nuisance, **except when such sale is done in compliance with the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/1 et seq. It shall be unlawful for any retail establishment or similar use, even when licensed by the State of the Illinois under the Cannabis Regulation and Tax Act 705/1-1 et. seq., to sell drug paraphernalia at retail in the village.**

Sec. 12-380. ~~Enforcement.~~

~~(a) — The Corporation Counsel of the village may commence an action to abate a public nuisance as described in this section in the name of the People of the Village of Wilmette in the Circuit Court.~~

~~(b) — Upon being satisfied by affidavits or other sworn evidence that an alleged public nuisance exists, the court may, without notice or bond, issue a temporary injunction to enjoin any defendant from maintaining such nuisance and may issue an order restraining any defendant from removing or interfering with any property used in connection with the public nuisance.~~

~~(c) — If during the proceedings and hearing upon the merits the existence of the nuisance is established, and it is established that such nuisance was maintained with the intentional, knowing, reckless or negligent permission of the owner, or an agent of the owner managing the premises, the court shall enter an order restraining all persons from maintaining or permitting such nuisance and from using the premises for a period of one year thereafter. However, an owner, lessee or other occupant thereof may use such premises if the owner gives bond with sufficient security or surety, in an amount between \$5,000.00 and \$10,000.00 approved by the court, payable to the People of the Village of Wilmette. Such bond shall include a condition that no offense specified in this article shall be committed at, in or upon the property described, and a condition that the principal obligor and surety assume responsibility for any fine, costs or damages incurred by any person resulting from such an offense.~~

Sec. 12-381. - Exemptions.

(a) This article shall not apply to:

(1) Items marketed for use in the preparation, compounding, packaging, labeling or other use of cannabis or a controlled substance as an incident to lawful research, teaching or chemical analysis and not for sale; or

(2) Items marketed for, or historically and customarily used in connection with the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, or inhaling of tobacco, cannabis, or any other lawful substance.

Items exempt under this subsection include, but are not limited to, garden hoes, rakes, sickles, baggies, tobacco pipes and cigarette-rolling papers.

(3) Items listed in section 12-351 which are marketed for decorative purposes, when such items have been rendered completely inoperable or incapable of being used for any illicit purpose prohibited by this article.

(4) A person who is legally authorized to possess hypodermic syringes or needles under the Hypodermic Syringes and Needles Act.

(5) When the, possession, sale, delivery, or distribution of paraphernalia is done so in compliance with the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/1 et seq or the possession of paraphernalia is done so in compliance with the Cannabis Regulation and Tax Act, 705/1-1 et. seq.

~~(b) — In determining whether or not a particular item is exempt under this subsection, the trier of fact should consider, in addition to all other logically relevant factors, the following:~~

- ~~(1) — The nature, design, mechanics and any peculiar or unusual characteristic of the device involved;~~
- ~~(2) — The general, usual, customary and historical use to which the item involved has been put;~~
- ~~(3) — Expert evidence concerning the ordinary or customary use of the item and the effect of any peculiarity in the design or engineering of the device upon its functioning;~~
- ~~(4) — Any written instructions accompanying the delivery of the item concerning the purposes or uses to which the item can or may be put;~~
- ~~(5) — Any oral instructions provided by the seller of the item at the time and place of sale or commercial delivery;~~
- ~~(6) — Any newspaper or magazine article, or national or local advertising, concerning the design, purpose or use of the item involved, and the entire context in which such article or advertising occurs;~~
- ~~(7) — The manner, place and circumstances in which the item was displayed for sale, as well as any item or items displayed for sale or otherwise exhibited upon the premises where the sale was made;~~
- ~~(8) — Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;~~
- ~~(9) — The existence and scope of legitimate uses for the object in the community.~~

~~Sec. 12-382. — Penalties.~~

~~(a) — All drug paraphernalia is subject to forfeiture.~~

~~(b) — Property subject to forfeiture under this article may be seized by any peace officer upon process issued by any court having jurisdiction over the property. Seizure by a peace officer without process may be made:~~

- ~~(1) — If the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal proceeding or in an injunction or forfeiture proceeding based upon this article;~~
- ~~(2) — If there is probable cause to believe that the property is directly or indirectly dangerous to health or safety; or~~
- ~~(3) — In accordance with the Code of Criminal Procedure, as amended.~~

~~(c) — Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement department or agency employing the seizing officer, subject only to the order and judgments of the Circuit Court having jurisdiction~~

~~over the forfeiture proceedings. When property is seized under this chapter, the chief administrative officer of the seizing department or agency may place the property under seal, or remove the property to a place designated by him.~~

~~(d) No disposition may be made of property under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court.~~

~~(e) When property is forfeited under this chapter, the chief administrative officer of the seizing department or agency may retain it for official use, or forward it to the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency, for disposition.~~

Secs. 12-38~~23~~—12-407. - Reserved.

SECTION 4: The Wilmette Village Code, as amended, is further amended in Chapter 12, Article XIX, Smoking Regulations in Public Places and Places of Employment by deleting the text of said Article XIX shown in strikethrough type below and inserting the new text shown in underlined bold type below in the manner and form shown below so that said Article XIX shall hereafter read as follows:

ARTICLE XIX. - SMOKING REGULATIONS IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

Sec. 12-515. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bar means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and that derives no more than ten percent of its gross revenue from the sale of food consumed on the premises. The term "bar" includes, but is not limited to, taverns, nightclubs, cocktail lounges, adult entertainment facilities, and cabarets.

Cannabis shall have the meaning ascribed to it in the Section 1-10 of the Cannabis Regulation and Tax Act (410 ILCS 705/1-10).

Employee means a person who is employed by an employer in consideration for direct or indirect monetary wages or profits or a person who volunteers his services for a non-profit entity.

Employer means a person, business, partnership, association, or corporation, including a municipal corporation, trust, or non-profit entity, that employs the services of one or more individual persons.

Enclosed area means all space between a floor and a ceiling that is enclosed or partially enclosed with:

- (1) Solid walls or windows, exclusive of doorways; or
- (2) Solid walls with partitions and no windows, exclusive of doorways, that extend from the floor to the ceiling, including, without limitation, lobbies and corridors.

Enclosed or partially enclosed sports arena means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller rink, ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise or participate in athletic competitions or recreational activities or to witness sports, cultural, recreational, or other events.

Gaming equipment or supplies means gaming equipment/supplies as defined in the Illinois Gaming Board Rules of the Illinois Administrative Code.

Gaming facility means an establishment utilized primarily for the purposes of gaming and where gaming equipment or supplies are operated for the purposes of accruing business revenue.

Healthcare facility means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. The term "healthcare facility" means and includes all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within healthcare facilities.

Place of employment means any area under the control of a public or private employer that employees are required to enter, leave, or pass through during the course of employment, including, but not limited to, entrances and exits to places of employment, including a minimum distance, as set forth in windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; offices and work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment.

Private club means:

- (1) A not-for-profit association that:

- a. Has been in active and continuous existence for at least three years prior to the effective date of the amendatory Act of the 95th General Assembly, whether incorporated or not; and
- b. Is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times; and
- c. Is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain; and
- d. Only sells alcoholic beverages incidental to its operation.

(2) An organization that is managed by a board of directors, executive committee, or similar body chosen by the members at an annual meeting, has established bylaws, a constitution, or both to govern its activities, and has been granted an exemption from the payment of federal income tax as a club under 26 USC 501.

Private residence means the part of a structure used as a dwelling, including, without limitation means a private home, townhouse, condominium, apartment, mobile home, vacation home, cabin, or cottage. For the purposes of this definition, a hotel, motel, inn, resort, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home, or assisted living facility shall not be considered a private residence.

Public place means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the State, or any other public entity and regardless of whether a fee is charged for admission, including a minimum distance, as set forth in section 12-516, of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. The term "public place" 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. The term "public place" includes, but is not limited to, hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, libraries, museums, concert halls, public conveyances, educational facilities, nursing homes, auditoriums, enclosed or partially enclosed sports arenas, meeting rooms, schools, exhibition halls, convention facilities, polling places, private clubs, gaming facilities, all government owned vehicles and facilities, including buildings and vehicles owned, leased, or operated by the State or state subcontract, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, reception areas, and no less than 75 percent of the sleeping quarters within a hotel, motel, resort, inn, lodge, bed and breakfast, or other similar public accommodation that are rented to guests, but excludes private residences.

Restaurant means:

(1) An eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, that gives or offers for sale food to the public, guests, or employees; and

- (2) A kitchen or catering facility in which food is prepared on the premises for serving elsewhere; and
- (3) A bar area within a restaurant.

Retail tobacco store means a retail establishment that derives more than 80 percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. The term "retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.

Smoke or smoking means the carrying, smoking, burning, inhaling, or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, herbs, cannabis, or any other lighted smoking equipment. The term "smoke" or "smoking" also means the use of vaporizers which are intended to simulate smoking tobacco, electronic cigarettes (a/k/a e-cigs or e-cigarettes), or any electronic nicotine delivery system typically, but not necessarily battery powered, which produce an aerosol which delivers nicotine to the user by means of inhalation.

Sec. 12-516. - Smoking prohibited in public places and places of employment and government vehicles.

- (a) It shall be unlawful for any person to smoke in any public place or place of employment, or to smoke within 15 feet of any entrance to a public place or place of employment.
- (b) It shall be unlawful for any person to smoke anywhere within a distance of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited under this section, so as to ensure that tobacco smoke does not enter the area through entrances, exits, open windows, or other means.
- (c) It shall be unlawful for any person to smoke in any place designated as a "No Smoking Area," as provided in section 12-518.
- (d) It shall be unlawful for any person to smoke in any vehicle owned, leased or operated by the State or any political subdivision of the State, including, but not limited to, the village.
- (e) It shall be unlawful for any person to smoke in any portion of the living quarters, including, but not limited to, sleeping rooms, dining areas, restrooms, laundry areas, lobbies, and hallways, of a building used in whole or in part as a student dormitory that is owned and operated or otherwise utilized by a public or private institution of higher education.
- (f) It shall be unlawful for any employer to knowingly permit smoking in any enclosed area in any place of employment in violation of subsections (a), (b) or (c) of this section.

(g) It shall be unlawful for the owner, occupant or lessee, as the case may be, in control of a public place to knowingly permit smoking in any enclosed area in said public place in violation of subsections (a), (b) or (c) of this section.

(h) It shall be unlawful for an employer or for the owner, occupant or lessee, as the case may be, in control of a public place to fail to post any required signs or fail to remove ash trays, as provided in section 12-519.

(i) It shall be unlawful for any person to smoke or otherwise consume or use cannabis in any Public Place, which shall include a Retail Tobacco Store or Cannabis business establishments.

“Public Place,” for purposes of cannabis consumption, shall also have the same meaning as defined by the Cannabis Regulation and Tax Act, which means any place where a person could reasonably be expected to be observed by others. "Public place" includes all parts of buildings owned in whole or in part, or leased, by the State or a unit of local government. "Public place" 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 place” shall also mean any place or location also defined as a “Public Place” in this Article.

Sec. 12-517. - Exemptions.

Notwithstanding any other provision of this article and the sections thereof, smoking is allowed in the following areas:

(1) Private residences or dwelling places, except when used as a child care, adult day care, or healthcare facility or any other home-based business open to the public. **A landlord may restrict the use of cannabis pursuant to the Cannabis Regulation and Tax Act.**

(2) Retail tobacco stores as defined in section 12-515 in operation prior to January 1, 2008. Any retail tobacco store that begins operation after January 1, 2008 may only qualify for an exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited. In order to maintain an exemption under this section, a retail tobacco store shall annually file with the village's Department of Law no later than February 15 a copy of the affidavit filed by the retail tobacco store by January 31 of that same calendar year with the Illinois Department of Public Health pursuant to section 35 of the Smoke Free Illinois Act (P.A. 95-17, § 35; as amended) stating the percentage of its gross income during the prior calendar year that was derived from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, or other smoking devices for smoking tobacco and related smoking accessories.

(3) Private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to

be placed or to remain in a room where smoking is permitted and the smoke shall not infiltrate other areas of the nursing home.

(4) Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms, provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited. Not more than 25 percent of the rooms rented to guests in a hotel or motel may be designated as rooms where smoking is allowed. The status of rooms as smoking or nonsmoking may not be changed, except to permanently add additional nonsmoking rooms.

Sec. 12-518. - Designation of other no smoking areas.

Notwithstanding any other provisions of this article, any employer, owner, occupant, lessee, operator, manager, or other person in control of any public place or place of employment may designate a non-enclosed area of a public place or place of employment, as an area where smoking is also prohibited, provided that such employer, owner, occupant, lessee, operator, manager or other person in control shall conspicuously post signs prohibiting smoking in the manner described in section 12-519.

Sec. 12-519. - Posting of signs and removal of ash trays.

(a) "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted in each public place and place of employment where smoking is prohibited by this article by the owner, operator, manager, or other person in control of that place.

(b) Each public place and place of employment where smoking is prohibited by this article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager, or other person having control of the area.

Sec. 12-520. - Violations and penalties.

(a) A person, corporation, partnership, association or other entity who violates **this article** shall be fined **in the manner provided for in Section 2-1305.** ~~pursuant to this section. Each day that a violation occurs is a separate violation.~~

~~(b) A person who smokes in an area where smoking is prohibited under sections 12-516(a) through (e) shall be fined in an amount that is not less than \$100.00 and not more than \$250.00.~~

~~(c) A person who owns, operates, or otherwise controls a public place or place of employment that violates sections 12-516(f) through (h) shall be fined:~~

~~(1) Not less than \$250.00 for the first violation;~~

~~(2) Not less than \$500.00 for the second violation within one year after the first violation; and~~

~~(3) — Not less than \$2,500.00 for each additional violation within one year after the first violation.~~

~~(d) — In addition to any other penalty provided in this section, the village may apply to any court of competent jurisdiction for injunctive relief to require compliance with, or cease violations of, the provisions of this article.~~

Sec. 12-521. - Inconsistency with Fire Prevention Code.

No portion of this article shall be deemed to supersede any portion of chapter 9, section 7, the Fire Prevention Code of the village, as adopted. In the event of any inconsistency between the provisions of this article and any of the provisions of section 9-7, the provisions of section 9-7 shall control.

Sec. 12-522. - Inconsistency with Smoke Free Illinois Act.

No portion of this article shall be interpreted to regulate smoking in public places and places of employment in a manner that is less restrictive than that provided in the Smoke Free Illinois Act, P.A. 95-17, eff. Jan. 1, 2008, now or hereafter amended.

Sec. 12-523. - Responsibility of owner or occupant of any premises for unlawful assembly by minors.

It shall be unlawful for any person who has ownership or control of any motor vehicle, conveyance, vessel, house, apartment, room, hotel room, shed, yard, premises, or other area to suffer, permit or allow two or more persons under the age of 21 years to assemble or be assembled thereon when said person knows, or reasonably should know, that said persons under the age of 21 years located in such motor vehicle, conveyance, vessel, house, apartment, room, hotel room, shed, yard, premises, or other area are:

(1) In possession of ~~any cannabis or~~ controlled substance prohibited by state statute or village ordinance; or

(2) In possession of any alcoholic beverages, except that a person under the age of 21 years may be in possession of or consume alcoholic beverages in the performance of a bona fide religious service or ceremony.

(3) In possession of cannabis, except if said person under the age of 21 are lawfully allowed to consume cannabis pursuant to the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/1 et. seq.

Secs. 12-524—12-554. - Reserved.

SECTION 5: The Wilmette Village Code, as amended, is further amended in Chapter 6, Finance, by adding new Article XVIII, Business Taxes; Cannabis Retailers' Occupation Tax in the

manner and form shown below so that said Article XVIII shall hereafter read as follows and existing Article XVIII Administration and Enforcement of Municipal Tax shall be renumbered to immediately follow the new Article XVIII:

Sec 6-469. Tax imposed; Rate.

(a) A tax is hereby imposed upon all persons engaged in the business of selling cannabis, other than cannabis purchased under the Compassionate Use of Medical Cannabis Pilot Program Act, at retail in the Village at the rate of 3% of the gross receipts from these sales made in the course of that business.

(b) The imposition of this tax is in accordance with the provisions of Sections 8-11-22, of the Illinois Municipal Code (65 ILCS 5/8-11-22).

Sec 6-470 Collection of tax by retailers.

(a) The tax imposed by this Ordinance shall be remitted by such retailer to the Illinois Department of Revenue. Any tax required to be collected pursuant to or as authorized by this Article and any such tax collected by such retailer and required to be remitted to the Illinois Department of Revenue shall constitute a debt owed by the retailer to the State. Retailers may reimburse themselves for their seller's tax liability hereunder by separately stating that tax as an additional charge, which charge may be stated in combination, in a single amount, with any State tax that sellers are required to collect.

(b) The taxes hereby imposed, and all civil penalties that may be assessed as an incident thereto, shall be collected and enforced by the Illinois Department of Revenue. The Illinois Department of Revenue shall have full power to administer and enforce the provisions of this article.

SECTION 6: The Wilmette Village Code, as amended, is further amended in Appendix A Zoning Ordinance, Article 2, Section 30-2.4, DEFINITIONS, by adding the following definition, to be placed in alphabetical order, in the manner and form shown below, by deleting the text shown in strikethrough and inserting the new text shown in underlined, bold type below, so that Section 30-2.4 shall hereafter provide for this additional definition as follows:

30-2.4 DEFINITIONS

“Cannabis business establishment” means a cultivation center, craft grower, processing organization, dispensing organization, infusers, or transporting organization.

“Craft grower” means a facility operated by an organization or business that is licensed by the Department of Agriculture to cultivate, dry, cure, and package cannabis and perform other necessary activities to make cannabis available for sale at a dispensing organization or use at a processing organization. A craft grower may contain up to 5,000 square feet of canopy space on its premises for plants in the flowering state. The Department of Agriculture may authorize an increase or decrease of flowering stage cultivation space in increments of 3,000 square feet by rule based on market need, craft grower capacity, and the licensee’s history of compliance or noncompliance, with a maximum space of 14,000 square feet for cultivating plants in the flowering stage, which must be cultivated in all stages of growth in an enclosed and secure area. A craft grower may share premises with a processing organization or a dispensing organization, or both, provided each licensee stores currency and cannabis or cannabis-infused products in a separate secured vault to which the other licensee does not have access or all licensees sharing a vault share more than 50% of the same ownership.

“Cultivation center” means a facility operated by an organization or business that is licensed by the Department of Agriculture to cultivate, process, transport (unless otherwise limited by this Act), and perform other necessary activities to provide cannabis and cannabis-infused products to cannabis business establishments.

“Dispensary” means a facility operated by a dispensing organization at which activities licensed by this Act may occur.

“Dispensing organization” means a facility operated by an organization or business that is licensed by the Department of Financial and Professional Regulation to acquire cannabis from a cultivation center, craft grower, processing organization, or another dispensary for the purpose of selling or dispensing cannabis, cannabis-infused products, cannabis seeds, paraphernalia, or related supplies under this Act to purchasers or to qualified registered medical cannabis patients and caregivers. As used in this Act, dispensary organization shall include a registered medical cannabis organization as defined in the Compassionate Use of Medical Cannabis Pilot Program Act or its successor Act that has obtained an Early Approval Adult Use Dispensing Organization License.

“Infuser organization” or “infuser” means a facility operated by an organization or business that is licensed by the Department of Agriculture to directly incorporate cannabis or cannabis concentrate into a product formulation to produce a cannabis-infused product.

“Processing organization” or “processor” means a facility operated by an organization or business that is licensed by the Department of Agriculture to either extract constituent chemicals or compounds to produce cannabis concentrate or incorporate cannabis or cannabis concentrate into a product formulation to produce a cannabis product.

“Transporting organization” or “transporter” means an organization or business that is licensed by the Department of Agriculture to transport cannabis on behalf of a cannabis business establishment or a community college licensed under the Community College Cannabis Vocational Training Pilot Program.

SECTION 7: “Cannabis Business Establishments” are not authorized as permitted or special uses within the Village of Wilmette pursuant to this Ordinance.

SECTION 8: Until June 30, 2021, or until new ordinances are adopted, whichever comes first, no new applications for the operation of any Cannabis Business Establishments shall be considered or issued by the Village or heard for any hearing before any Village Commission or Committee.

SECTION 9: The prohibitions provided for in Village Code in Chapter 12, Article XIII and Article XIV, as amended in this ordinance in regards to the sale of cannabis and drug paraphernalia, shall remain in place until the expiration of this moratorium or until a new ordinances adopted in regards to the sale of cannabis at retail are adopted.

SECTION 10: Codifier’s Authority. The Village’s codifier is authorized and hereby directed, to adjust section and paragraph numbering as may be necessary to render this ordinance consistent with the numbering of the Village Code.

SECTION 11: This Ordinance shall be in full force and effect from its passage, approval and publication as provided by law. This Ordinance shall be published in pamphlet form.

PASSED by the President and Board of Trustees of the Village of Wilmette, Illinois, on the **22nd** day of **October, 2019**, according to the following roll call vote:

AYES: None.

NAYS: None.

ABSTAIN: None.

ABSENT: None.

Clerk of the Village of Wilmette, IL

APPROVED by the President of the Village of Wilmette, Illinois, this **22nd** day of **October**,
2019.

President of the Village of Wilmette, IL

ATTEST:

Clerk of the Village of Wilmette, IL

Published in pamphlet form October 23, 2019.