



# CARBONDALE

All Ways Open

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## DISCUSSION ITEM (DI) 2019-04

**From:** City Manager/Legal/Police/Planning

**Date:** September 24, 2019

**Re:** Recreational Cannabis – (DI 2019-04)

**A. Background:** The state of Illinois approved the use and possession of recreational cannabis (with restrictions) for adults 21 years of age and older effective January 1, 2020 when it passed House Bill 1438. This will allow Illinois residents to be able to possess up to:

- 30 grams, or just over one ounce of “flower”
- 5 grams of cannabis concentrate
- 500 milligrams of THC (the chemical that makes users high) in a cannabis infused product such as candy, other consumable products (referred to as “edibles”), or tinctures, and lotions
- Non-Illinois residents may legally possess up to ½ of these amounts

Possession of cannabis is prohibited in the following locations:

- School buses
- On the grounds of any preschool,
- Primary or secondary school unless approved as a medical cannabis patient
- Correctional facilities,
- In a private residence where licensed child care or other similar social service care is provided on the premises
- In a vehicle unless it is in a sealed, secured, tamper-evident container and reasonably inaccessible while the vehicle is moving

Additionally, consumption of cannabis is prohibited in any public place or in knowingly close proximity to anyone under 21 years of age, and in any public place where a person could reasonably be expected to be observed by others. Consumption in any building owned or leased by the State or City is prohibited. Any location included in the Smoke Free Illinois Act, including hospitals, restaurants, retail stores, offices, etc. is also prohibited.

Universities, colleges, and other post-secondary education institutions can restrict or prohibit cannabis use on their property.

## **B. FAQs**

### **Zoning**

#### **May municipalities and other units of local government regulate cannabis establishments within their boundaries?**

A unit of local government may enact reasonable zoning ordinances or resolutions not in conflict with the Act or with Illinois Office of Cannabis Control, Illinois Department of Public Health, Illinois Department of Financial and Professional Regulation and Illinois Department of Agriculture rules regulating cannabis establishments. A unit of local government may enact ordinances or rules governing the time, place, manner and number of cannabis establishment operations, including a minimum distance limitation between cannabis establishments and locations it deems sensitive through the use of special use permits.

#### **May municipalities prohibit or regulate cannabis establishments outside of their boundaries?**

A municipality may exert extra territorial zoning authority in the unincorporated area within one and one half miles of its corporate limits through the adoption of a comprehensive plan and zoning for that area pursuant to 65 ILCS 5/11-13-1. The municipal ordinances would control that area absent a county zoning ordinance, or another municipality with zoning already in place.

#### **May municipalities regulate the on-premises consumption of cannabis and/or allow cannabis cafes and lounges?**

Yes. A municipality may regulate and/or allow the on-premises consumption of cannabis at or in a cannabis business establishment within its jurisdiction in a manner consistent with the Act. The Act allows the creation of “cannabis cafes/lounges” at the discretion of the municipality. Cannabis business establishments or other entities authorized or permitted by a municipality to allow on-site consumption shall not be deemed a public place within the meaning of the Smoke Free Illinois Act.

#### **Does the Act contain any location restrictions on dispensaries?**

A dispensing organization may not be located within 1,500 feet of the property line of a preexisting dispensing organization. These distance restrictions are different than those originally imposed by the Illinois Medical Cannabis Program Act. Under the Medical Cannabis Program Act, registered cultivation centers could not locate within 2,500 feet of the property line of a pre-existing public or private preschool or elementary or secondary school or day care center, day care home, group day care home, part day child care facility or an area zoned for residential use (410 ILCS 130/105(c)) and registered dispensing organizations could not locate within 1,000 feet of the property line of a pre-existing public or private preschool or elementary or secondary school or day care center, day care home, group day care home, or part day child care facility or be located in a

house, apartment, condominium, or an area zoned for residential use (410 ILCS 130/130(d)). P.A. 101-0363, which made various amendments to the Medical Cannabis Program Act and became effect on August 8, 2019, eliminated the distance restrictions for medical cannabis dispensaries registered after July 1, 2019.

**Does failure to be in compliance with local zoning regulations have any impact on a cannabis establishment's ability to operate in Illinois?**

Yes. A state-issued cannabis establishment license will be denied if the applicant is not in compliance with local zoning rules.

**May municipalities and other units of local government fine or penalize cannabis establishments for violation of local zoning regulations?**

A unit of local government may establish civil penalties for violation of an ordinance or rules governing the time, place and manner of operation of a cannabis establishment within the jurisdiction of the unit of local government.

**May municipalities regulate personal possession and consumption of cannabis?**

The Act provides municipalities with the authority to locally regulate possession and consumption of cannabis by private citizens in a manner consistent with the Act. Therefore, municipalities may adopt the prohibitions and penalties of the Act into their codes which will give the local governments the ability to enforce and prosecute personal possession and consumption violations through local adjudication or the circuit court.

**Does the Act apply to home rule units of government?**

Yes. A unit of local government may not regulate cannabis-related activities in a manner more restrictive than their regulation by the state under the Act. Home rule preemption applies here. "This subsection is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State." Section 55-25(4). Home rule preemption is specifically set forth in Section 55-90 of the Act. "Except as otherwise provided in this Act, a unit of local government, including a home rule unit, may not regulate or license the activities described in this Act."

**Does the Act contain any operational rules for adult-use cannabis dispensing organizations?**

The Act, in Section 15-70, contains a list of specific business operational rules for adult-use cannabis dispensing organizations that provide a clear baseline of regulatory guidelines for these establishments. Municipalities may include these in any statement on approvals or conditions that are part of any conditional use permit. These rules include:

- A dispensing organization must include the legal name of the dispensary on the packaging of any cannabis product it sells.
- Dispensing organizations are prohibited from selling any product containing alcohol except tinctures, which are limited to containers that must be no larger than 100 milliliters.

- A dispensing organization may only accept cannabis deliveries into a restricted access area. Deliveries may not be accepted through the public or limited access areas unless otherwise approved under the Act.
- A dispensing organization shall maintain compliance with state and local building, fire and zoning requirements or regulations.
- A dispensing organization shall submit a list to the state of the names of all service professionals that will work at the dispensary.
- A dispensing organization's license allows for a dispensary to be operated only at a single location.
- A dispensing organization may operate between 6:00 a.m. and 10:00 p.m. local time.
- A dispensing organization must keep all lighting outside and inside the dispensary in good working order and wattage sufficient for security cameras.

A dispensing organization shall not:

- Produce or manufacture cannabis;
- Accept a cannabis product from an adult-use cultivation center, craft grower, infuser, dispensing organization or transporting organization unless it is prepackaged and labeled in accordance with the Act and any rules that may be adopted pursuant to the Act;
- Obtain cannabis or cannabis-infused products from outside the State of Illinois;
- Sell cannabis or cannabis-infused products to a purchaser unless the dispensary organization is licensed under the Illinois Medical Cannabis Program Act, and the individual is registered under the Medical Cannabis Program Act or the purchaser has been verified to be over the age of 21;
- Enter into an exclusive agreement with any adult-use cannabis cultivation center, craft grower or infuser;
- Refuse to conduct business with an adult-use cannabis cultivation center, craft grower, transporting organization or infuser that has the ability to properly deliver the product and is permitted by the Illinois Department of Agriculture, on the same terms as other adult-use cannabis cultivation centers, craft growers, infusers or transporters with whom it is dealing;
- Operate drive-through windows;
- Allow for the dispensing of cannabis or cannabis-infused products in vending machines;
- Transport cannabis to residences or other locations where purchasers may be for delivery;
- Enter into agreements to allow persons who are not dispensing organization agents to deliver cannabis or to transport cannabis to purchasers;
- Operate a dispensing organization if its video surveillance equipment is inoperative;

- Operate a dispensing organization if the point-of-sale equipment is inoperative;
- Operate a dispensing organization if the state's cannabis electronic verification system is inoperative;
- Operate a dispensing organization when there are fewer than two people working at any time;
- Be located within 1,500 feet of the property line of a pre-existing dispensing organization;
- Sell clones or any other live plant material;
- Sell cannabis, cannabis concentrate or cannabis-infused products in combination or bundled with each other or any other items for one price, and each item of cannabis, concentrate or cannabis-infused product must be separately identified by quantity and price on the receipt;
- Violate any other requirements or prohibitions set by the Act or administrative rules.

## **Licensing**

### **Is a license required to operate a cannabis establishment in Illinois?**

Yes. The Illinois Office of Cannabis Control shall issue licenses for all dispensing organizations. Dispensing organizations are defined by the Act as a facility operated by an organization or business that is licensed by the Illinois 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 the Act to purchasers or to qualified registered medical cannabis patients and caregivers.

### **May municipalities require licenses to operate a cannabis establishment within their boundaries?**

Since licensing is a function of the state under the Act, local governments may only enforce generally applicable business registration requirements for cannabis establishments and conduct inspections of the premises to ensure compliance with local ordinances.

### **What are the different types of licenses?**

The Act creates the following adult-use cannabis licenses, subject to various fees and subject to administration by the Illinois Department of Agriculture and the Illinois Department of Financial and Professional Regulation:

- Early Approval Adult-Use Dispensing Organization - A license that permits a medical cannabis dispensing organization licensed under the Illinois Medical Cannabis Program Act as of the effective date of the Act to begin selling cannabis to purchasers as permitted by the Act as of January 1, 2020.

- Early Approval Adult-Use Dispensing Organization; Secondary Site - A license that permits a medical cannabis dispensing organization licensed under the Illinois Medical Cannabis Program Act to operate a dispensing organization to serve purchasers at a secondary site not within 1,500 feet of another medical cannabis dispensing organization or adult use dispensing organization, and within any BLS Region that shares territory with the dispensing organization district to which the medical cannabis dispensing organization is assigned.
- Early Approval Adult-Use Cultivation Center - A license that permits a medical cannabis cultivation center licensed under the Illinois Medical Cannabis Program Act as of the effective date of the Act to begin cultivating, infusing, packaging, transporting (unless otherwise provided in the Act) and selling cannabis to cannabis business establishments for resale to purchasers as permitted by the Act as of January 1, 2020. A cultivation center may begin producing cannabis and cannabis-infused products once the Early Approval Adult Use Cultivation Center License is approved. A cultivation center that obtains an Early Approval Adult Use Cultivation Center License may begin selling cannabis and cannabis-infused products to approved dispensing organizations on December 1, 2019.
- Conditional Adult-Use Dispensing Organization License - A license awarded to top-scoring applicants for an Adult-Use Dispensing Organization License that reserves to the applicant the right to an adult-use dispensing organization license if the applicant meets certain conditions described in the Act. A dispensing organization that is awarded a Conditional Adult-Use Dispensing Organization License is not entitled to purchase, possess, sell or dispense cannabis or cannabis-infused products until the applicant has received an Adult Use Dispensing Organization License.
- Conditional Adult-Use Cultivation Center License - A license awarded to top-scoring applicants for an Adult-Use Cultivation Center License that reserves to the applicant the right to an Adult-Use Cultivation Center License if the applicant meets certain conditions as determined by the Illinois Department of Agriculture by rule. A cultivation center applicant that is awarded a Conditional Adult-Use Cultivation Center License is not entitled to grow, purchase, possess or sell cannabis or cannabis-infused products until the applicant has received an Adult-Use Cultivation Center License.
- Adult-Use Dispensing Organization - A license issued by the Illinois Department of Financial and Professional Regulation that permits a person to act as a dispensing organization under the Act and any administrative rule made in furtherance of the Act.
- Adult-Use Cultivation Center - A license issued by the Illinois Department of Agriculture that permits a person to act as a cultivation center under the Act and any administrative rule made in furtherance of the Act.
- Craft Grower - The Illinois Department of Agriculture shall issue up to 40 craft grower licenses by July 1, 2020. A “craft grower” is a facility operated by an organization or business that is licensed by the Illinois 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.

- Infuser - The Illinois Department of Agriculture shall issue up to 40 infuser licenses through a process provided for in the Act no later than July 1, 2020. "Infuser organization" or "infuser" means a facility operated by an organization or business that is licensed by the Illinois Department of Agriculture to directly incorporate cannabis or cannabis concentrate into a product formulation to produce a cannabis-infused product. An infuser is prohibited from extracting cannabis concentrate from raw cannabis material. Only cultivation centers and craft growers will be allowed to extract cannabis concentrate.
- Transporter - "Transporting organization" or "transporter" means an organization or business that is licensed by the Illinois Department of Agriculture to transport cannabis on behalf of a cannabis business establishment or a community college licensed under the Illinois Community College Cannabis Vocational Training Pilot Program.

### **Do State licenses need to be renewed?**

Yes. All licenses expire and are subject to the renewal provisions set forth in the Act. Adult-Use Dispensing Organization Licenses shall expire on March 31 of even-numbered years. Licensees must submit a renewal application as provided by the Illinois Department of Financial and Professional Regulation and pay the required renewal fee.

### **Social Justice**

#### **What other agency oversight does the state have for social issues related to cannabis production, sale and use?**

- The Restoring Our Communities (ROC) program will be created. The ROC program will be a performance incentive funding program for high-need, underserved communities throughout the state.
- The purpose of the ROC program will be to directly address the impact of economic disinvestment and the historical use of criminal justice responses to community and individual needs by supporting local design and control of community-based responses to these impacts that can be accessed outside of the criminal justice system.
- The ROC program will provide planning and implementation grants as well as technical assistance to collaborative groups that include human service providers and community-based organizations, individuals who have experienced the criminal justice system or other systems of state intervention, individuals who have been consumers of social programs administered by the state or local jurisdictions, and local leaders from all sectors.

### **Taxation**

#### **How is cannabis cultivation going to be taxed at the state level?**

Beginning on January 1, 2020, a Cannabis Cultivation Privilege Tax is imposed by the State of Illinois upon the privilege of cultivating cannabis at the rate of 7% of the gross receipts from the sale of cannabis by a cultivator. This tax rate already exists under current medical cannabis law. As all funds collected under the Cannabis Regulation and Tax Act and under the Compassionate Use of Medical Cannabis Program Act will be deposited into the state's Cannabis Regulation Fund, the 7% cultivation tax that previously only applied to the cultivation of medical cannabis is repealed, effective July 1, 2020 (See 410 ILCS 130/200), and replaced by the same tax that applies to both adult-use and medical cannabis cultivation. All funds received by the Illinois Department of Revenue under the privilege tax shall be paid into the Cannabis Regulation Fund in the state treasury. The Cannabis Cultivation Privilege Tax will be collected in addition to all other occupation or privilege taxes imposed by the State of Illinois or by any municipal corporation or political subdivision (whether the cultivation is for medical or adult-use purposes)

### **How is the sale of cannabis going to be taxed at the state level?**

- Beginning on January 1, 2020, a Cannabis Purchaser Excise Tax is imposed by the State of Illinois upon purchasers for the privilege of using cannabis at the following rates:
  - Cannabis flower or products with less than 35% Tetrahydrocannabinol (THC): 10% tax.
  - Cannabis-infused products (i.e., edibles): 20% tax.
  - Cannabis flower or products with a THC concentration higher than 35%: 25% tax.
- The purchase price of any product that contains any amount of cannabis or any derivative is subject to the excise tax on the full purchase price of the product.
- The purchase of cannabis is also subject to state and local sales taxes. Sales tax is collected in addition to all other occupation, privilege or excise taxes imposed by the State of Illinois or by any municipal corporation or political subdivision of the state.

### **How may cannabis be taxed at the local level?**

- On and after January 1, 2020, the corporate authorities of any county or municipality may, by ordinance, impose a County and Municipal Cannabis Retailers' Occupation Tax (MCROT).
- For municipalities, the MCROT is imposed upon purchasers for the privilege of using adult-use cannabis purchased in the municipality. The rate of tax shall not exceed 3% of the purchase price. If imposed, the tax shall only be imposed in 0.25% increments.
- Counties are authorized to impose a tax of up to 3% in incorporated areas and 3.75% on sales emanating from unincorporated areas.



## C. Analysis

Staff has reviewed the legislation, toured a local medical dispensary and met with their staff, and spoke to city personnel in Colorado (Boulder and Fort Collins) in order to gain a better understanding of what we may expect following the legalization of recreational cannabis. Staff has found that a major limitation to making recommendations to City Council is that the administrative rules regulating recreational cannabis are incomplete. Although we expect that many of the rules applying to medical marijuana will be transferred to the recreational market, until final rules are adopted the City Council should consider the following areas of concern:

- Security – Licensees will be required to submit a detailed security plan to the State. Dispensaries typically hold large sums of cash onsite, as well as unsold product. Colorado cities shared that it's not unusual for \$100,000 of cash to be present at a dispensary on any given day. As such, we assume that the final rules will mandate minimum standards for vaults at dispensaries as well as indoor and outdoor video surveillance. Licensed medical dispensaries do have these standards and safeguards in place.
- Odor Control – Colorado shared with us that the biggest complaint that they receive is in regards to odor. As such, it's normal for cities to require odor control plans with specific ventilation requirements. As the current Act reads, cities aren't able to enact specific requirements to address this issue.
- Home Grows – the Act allows medical cannabis patients who are 21 to participate in home cultivation. They are limited to five plants. Colorado reported to us that marijuana legalization has made it more difficult to enforce illegal grows on private property because it means marijuana odor or other signs of a grow are not necessarily indicative of an illegal number of plants or an illegal grow. Therefore, it's helpful to have a robust set of codes governing private property as well as the businesses. Again, until the final rules are adopted we don't know what our ability to regulate home grows will be.
- Taxation – Opponents of taxation argue that imposing too high of a tax initially can lead to growth of the black market. The bill sponsor encouraged municipalities to allow time for the market to mature before initiating a tax. However, cities can only tax cannabis a maximum of 3% which doesn't seem significant enough stimulate an illegal market. Our research indicates that it's feasible for a recreational dispensary to generate several million dollars annually which would translate into substantial revenue for the city, some of which can be allocated for administration and enforcement.
- Public Use – Although the Act prohibits anyone from consuming marijuana in a visible place, our research indicates that incidents of public consumption will increase following legalization. This would include both commercial and residential areas. Assuming this happens in Carbondale, we should expect complaints from residents to increase.
- Youth Impact – Colorado reports that there has been an increase in possession of cannabis by minors following legalization. Part of the increase is likely attributed to legalization but the increase could also, in part, be the result of

youths being more likely to report marijuana usage following legalization. However, there has also been a 16% decrease in the number of juvenile arrests statewide.

- DUI's – Colorado reports that overall, DUI's are down 15% statewide however, arrests where marijuana was the impairing substance increased from 12% of all DUI's to 15%. This is likely attributed to an increase in the number of police officers trained to detect marijuana impairment as well as heightened awareness following legalization.
- Arrests – Colorado reports that the total number of marijuana related arrests declined 52% from 2012 to 2017.
- Social Acceptance – The perceived risk by Colorado adults from using marijuana once per month decreased from 32.8% in 2005 to 18.9% in 2016, and at the national level the decrease was from 42.0% to 30.9%. The perception of great risk from smoking a pack of cigarettes per day or binge drinking remained stable during the same time.

References to above data can be found at <https://www.colorado.gov/pacific/dcj>

#### **D. Recommendation**

At this time, Staff recommends that the City Council not opt-out of permitting licensed recreational marijuana establishments from operating within the City limits. Until the final administrative rules are adopted, we can't make final determinations as to what our ability is to regulate local cannabis businesses. However, based on the established rules governing medical cannabis, it's likely that many of our questions and concerns will be mitigated assuming that recreational establishments are regulated similarly. In addition, we recommend that City Council impose a tax of 3% on all sales.