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MEMORANDUM

**To:** Al Bulthius, Mayor of the Village of Villa Park  
*cc: Richard Keehner, Village Manager of the Village of Villa Park*

**From:** Kathleen Field Orr, Village Attorney

**Date:** August 26, 2019

**Re:** Cannabis Regulation and Tax Act

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Beginning January 1, 2020, the sale, possession, and use of recreational cannabis will be legal throughout Illinois.

Although the Cannabis Regulation and Tax Act (410 ILCS 705/1-1, *et seq.*) (the “*Cannabis Act*”) does not allow municipalities (including home rule) to prohibit private consumption of marijuana, many factors concerning cannabis are within municipalities’ regulatory authority. The new law also permits municipalities to “opt-out” of the business of dispensing or cultivating recreational cannabis.

I. **Cannabis Businesses Authorized by the Cannabis Act**

The types of businesses which will be licensed by the State under the Cannabis Act are identified in the Act are:

- Cannabis Craft Grower
  - Cultivates, dries, cures, and packages cannabis
- Cannabis Cultivation Center
  - Cultivates, processes, and transports cannabis
- Cannabis Dispensing Organization
  - Acquires, sells, and dispenses cannabis, cannabis products, and cannabis paraphernalia

- Cannabis Infuser Organization
  - Incorporates cannabis or cannabis concentrate into cannabis products
- Cannabis Processing Organization
  - Extracts chemicals to create cannabis concentrate, or incorporate cannabis into cannabis products
- Cannabis Transporting Organization
  - Transports cannabis on behalf of cannabis businesses

The licensing of Cannabis Cultivation Centers, Cannabis Infuser Organizations, Cannabis Processing Organization, Cannabis Craft Growers and Cannabis Transporting Organization is to be done by the Illinois Department of Agriculture and the licensing of Cannabis Dispensary Organizations is to be done by the Department of Financial and Professional Regulation.

II. **Authority Granted to Municipalities under the Cannabis Act**

- A. The Cannabis Act authorizes a municipality to prohibit a cannabis business establishment with the exception of home cultivation.
- B. The Cannabis Act authorizes a municipality to regulate cannabis business establishments governing:
  - (i) Reasonable restrictions of time, place and manner of operation;
  - (ii) Number of cannabis business operations;
  - (iii) Reasonable zoning ordinances or resolutions;
  - (iv) Minimum distance between cannabis business establishments;
  - (v) Conditional use permits to limit locations deemed sensitive, including colleges and universities;
  - (vi) On-premise consumption at or in a cannabis business establishment in a manner consistent with the Cannabis Act; and,
  - (vii) Civil penalties for violations of any of the foregoing.

III. **State Restrictions Regarding the Use of Cannabis**

- A. The State has established specific regulations regarding the use of cannabis for which civil penalties for violations may be imposed:
  - (i) Transfer of cannabis, within or without remuneration, to a person under 21 years of age;
  - (ii) Purchase, possession, use, transport, consumption or growing of cannabis by a person under 21 years of age (unless authorized by the Compassionate Use of Medical Cannabis Pilot Program Act);

- (iii) Permission by a parent or guardian to the consumption of cannabis by a person under 21 years of age (a Class A misdemeanor imposing a fine not less than \$500.00);
- (iv) Possession of a resident of the State who is 21 years of age or older, of more than:
  - (a) 30 grams of cannabis flower;
  - (b) 500 milligrams of THC contained in a cannabis-infused product; or,
  - (c) 5 grams of cannabis concentrate.
- (v) Possession by a non-resident of the State who is 21 years of age or older, more than:
  - (a) 15 grams of cannabis flower;
  - (b) 2.5 grams of cannabis concentrate; or,
  - (c) 250 milligrams of THC contained in a cannabis infused product (a & b are considered cumulative)
- (vi) Undertaking any task under the influence of cannabis when doing so would constitute negligence, professional malpractice or professional misconduct;
- (vii) Possessing cannabis in a school bus; on the grounds of a preschool or primary or secondary school; in any correctional facility; in a vehicle unless in a sealed container; or, in a private residence which is used at any time to provide licensed childcare;
- (viii) Using cannabis on a school bus, grounds of a preschool or primary or secondary school, in a correctional facility; in a motor vehicle, private residence used at any time to provide licensed child care; in a public place or in close physical proximity to a person under the age of 21 years;
- (ix) Smoking cannabis in any place where smoking is prohibited under the Smoke Free Illinois Act.
- (x) Operating, navigating or in physical control of a vehicle in violation of the Illinois Vehicle Code;
- (xi) Use of cannabis by a law enforcement officer when on duty; and,
- (xii) Use of cannabis by a person holding a commercial driver's license while on duty.

#### IV. **Taxation**

- A. Pursuant to the Cannabis Act, the state has imposed the following taxes:
  - 1. Cannabis Cultivation Privilege Tax of 7% upon the gross receipts from the first sale of cannabis by a cultivator.
  - 2. Cannabis Purchaser Excise Tax as follows:
    - (a) 10% of the purchase price of any cannabis (other than a cannabis infused product with a delta-9 tetrahydrocannabinol less than 35%;
    - (b) 25% of the purchase price of any cannabis (other than a cannabis infused product) with a delta-9 tetrahydrocannabinol level above 35%; and,
    - (c) 20% of the purchase price of a cannabis infused product.
- B. 8% of the tax proceeds received by the State after allocations to the Department of Revenue as reimbursement for the implementation, administration and enforcement of the Cannabis Act and reimbursement of costs incurred by State courts, the Attorney General, State's Attorneys, Civil legal aid and the Department of Police

to facilitate petitions for expungement, shall be paid to the LOCAL GOVERNMENT DISTRIBUTIVE FUND.

- C. The Illinois Municipal Code is amended by the Cannabis Act to authorize the corporate authorities to impose a tax upon all persons engaged in the business of selling cannabis in an amount not to exceed 3% of the gross receipts, to be imposed in ¼% increments. The tax is to be administered by the Department of Revenue (“DOR”) less 1.5% which is to be transferred to the Tax Compliance and Administrative Fund established by DOR. This tax is in addition to the 1% municipal retail tax and 1% non-home rule retail tax.

V. **Employment**

- A. The Cannabis Act addresses an employer’s right to:
  - 1. Adopt reasonable zero tolerance or drug-free work place policies concerning drug testing, smoking, consumption, storage, of use of cannabis while either in the workplace or on-call;
  - 2. Prevent an employee from permitting an employee to perform his or her job when under the influence of or the use of cannabis;
  - 3. Limit or prevent discipline or termination for violating employer’s policies.
- B. Nothing in the Cannabis Act shall create a cause of action against an employer for subjecting an employee reasonable alcohol and drug testing on a good-faith that the employee used or possessed cannabis in the work place, that the employee was impaired as the result of the use or under the influence of cannabis when in the workplace or where an injury occurs to a third person if the employer had no reason to know employee was impaired.

VI. **Minimum Requirements**

Whether or not a municipality determines it to be in the best interest of its residents to prohibit the dispensing or cultivation of cannabis within its boundaries or to permit dispensing and cultivation, each municipality should determine the process and procedures for the adjudication of violations of the Cannabis Act and adopt such ordinances as may be necessary to authorize such actions.