Regulating Recreational Cannabis in Evanston

SEPTEMBER 16, 2019
Overview

- Compassionate Use of Medical Cannabis Pilot Program Act
- The Illinois Cannabis Regulation and Tax Act (HB 1438)
- Zoning Regulations Available to Municipalities
- Taxation
- City Code Changes
- Personnel
Illinois Compassionate Use of Medical Cannabis Pilot Program Act

The Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/1) was signed into law by the Illinois Governor in August 2013 with an effective date of January 1, 2014. The statute allows for the establishment of medical cannabis dispensaries and cultivation centers and the prescribing of medical cannabis to qualified patients throughout Illinois. The Act addresses a wide range of topics, most notably:

- employment regulations;
- law enforcement provisions;
- state facility licensing requirements;
- production standards for medical cannabis;
- prescriber and patient requirements; and
- local facility siting.
Illinois Medical Cannabis Act Highlights

Cultivation Centers

Up to twenty two (22) medical cannabis cultivation centers, no more than one per Illinois State Police District, may be registered in the State for operation by the Illinois Department of Agriculture. 410 ILCS 130/85.

A cultivation center cannot be located within 2,500 feet of the property line from a pre-existing public or private preschool or elementary or secondary school or day care center, group day care home, or part day child care facility and prohibited in areas zoned for residential use. 410 ILCS 130/105.

Only registered cultivation centers are authorized to grow cannabis.

Must comply with all federal, state and local building, zoning and fire codes and all local ordinances.
Illinois Medical Cannabis Act Highlights

Dispensaries

Up to sixty (60) dispensaries

A dispensary cannot be located within 1,000 feet of the property line of pre-existing public or private preschool, elementary, or secondary school, day care center, day care home, group day care home or part-day child care facility, and prohibited in an area zoned for residential use. 410 ILCS 130/130.

Cannabis can be sold to patients and caregivers.

Must comply with all federal, state and local building, zoning and fire codes and all local ordinances.
Illinois Medical Cannabis Municipal Regulations – Summary of Evanston

- Zoning Regulations – Classified as a medical office and a permitted use in districts that permit medical offices
- Enacted a Sales Tax on the cultivation center sales at 6% of the sale price per ounce (24-O-15)
- Entered into a lease agreement with a licensed dispensary, PharmaCann LLC, for a City owned property at 1804 Maple Avenue (expiration date December 31, 2021) and discussing a potential new lease agreement for the same space with the tenant.
- PharmaCann has 5 medical dispensaries: Arlington Heights, Evanston, North Aurora, Ottawa, and Romeoville
Illinois Medical Cannabis Municipal Regulations – Evanston, IL
Illinois Cannabis Regulation and Tax Act

- Effective Date is January 1, 2020; passed 5/31/19 and signed by Governor on 6/25/19
- The Act legalizes the possession and private use of cannabis for Illinois residents over 21 from licensed dispensaries across the State of Illinois.
- Municipalities may not restrict the private consumption that is authorized in the Act. However, the Act prohibits the use of cannabis in public places, schools, child care facilities, and other locations.
- This Act does not alter the state’s medical cannabis pilot program regulations. If the State were to change the distancing requirements for medical cannabis dispensaries, this would open up additional locations in Evanston for the businesses to locate.
Key Components to Regulation

- Legalization of adult (21+) possession and use of cannabis for recreational purposes
- Rapid but controlled expansion of cultivation center and dispensaries
- New Cannabis businesses – craft growers, processors, and delivery
- State and Local Taxation
- Expungement of minor violations of Cannabis Control act
- Social Equity Programs
Types of Cannabis Businesses

- Cultivation Center: large scale industrial growing facility
- Craft Grower (New): smaller cultivation center (5,000 – 14,000 sq feet). Can be co-located with a dispensary or other licensed cannabis business
- Dispensary: retail business licensed by IDFPR to sell cannabis
- Processor (New): light industrial/manufacturing facility that extracts constituent chemicals or compounds to produce cannabis concentrate in oil, resin, or other forms for sale to dispensaries and infusers
- Infuser (New): Facility that produces cannabis-infused products (e.g. edibles).
Cannabis Business Licenses

- **Effective Date**: First legal sales and consumption starts right away – January 1, 2020
- **Existing Businesses**: medical cannabis cultivation centers (20) and medical cannabis dispensaries (56) eligible for:
  - Both businesses can open by 1/1/2020 and start selling recreational cannabis, with State approval and proper zoning approvals.
  - Second location: Open a second retail storefront with proof of zoning compliance within a certain region (based on Bureau of Labor Statistics).
- Potential total dispensaries to open on January 1st: 112
Cannabis – New Businesses

New applicants to adult use cannabis market: cultivation centers, craft growers, infusers, transporting organizations, and dispensing organizations

- Wave 1:
  - Dept of Financial & Professional Reg: By 5/1/2020 – agency awards up to 75 new dispensary licenses
  - Dept of Agriculture: By 7/1/2020 - up to 40 licenses to infusers, 40 licenses to craft growers, and licenses to transporting organizations

- Wave 2:
  - Dept of Financial & Professional Reg: By 12/21/2021 – awards up to 110 new dispensary licenses
  - Dept of Agriculture: By 12/21/2021 – 60 new licenses to infusers
Use & Sale Restrictions

- Adult Recreational Possession and Use – 21 and up
  - Possession up to 30g flower/raw, 5g concentrated, 500 mg of infused products
  - Non-Illinois residents are permitted to have half these amounts

- Sales:
  - Existing dispensaries will address the early demand for the product
  - Staggered expansion through 2021
  - Maximum number of dispensaries in State of Illinois: 500

- On-Premises Consumption: subject to City permission and regulation
  - Smoking lounges
  - Dispensary consumption
Local government regulations must be related to time, place, manner, and number of cannabis businesses consistent with the Act. Meaning: hours of operation, distancing requirements, special use permits, and cap on number of businesses.

Plan Commission notice posted:

**Noticed Text Amendment- Accessory Recreational Cannabis Use  19PLND-0078**
A Zoning Ordinance Text Amendment pursuant to City Code Title 6, Zoning, to create definitions for recreational and medical cannabis related uses, establish any applicable general provisions for such uses, establish any applicable parking requirements for such uses, and amend the permitted and special uses in the Business, Commercial, Downtown, Research Park, Transitional Manufacturing, Industrial, and Special Purpose and Overlay zoning districts.

Plan Commission discussion to begin following City Council input, likely September 25th.
Primary considerations for the Plan Commission/City Council:

- Determine whether to allow or prohibit cannabis businesses; and if allowed:
- Add definitions for medical and recreational cannabis uses;
- Determine zoning districts for recreational dispensaries (prioritized), craft growers, cultivation centers, processing organizations, and infusers;
- Evaluate permitted use or special use and/or establish distancing and cap requirements;
  - Statute requires any cannabis dispensary cannot be located within 1,500 feet of another pre-existing dispensary or medical cannabis dispensary. Add additional distancing requirements from sensitive uses such as residential zoning districts or schools and child care facilities?
  - Cap on the maximum number of dispensaries
- Consider whether (a) on-premises consumption will be permitted; or (b) social use spaces (smoking establishments such as a hookah bar or cigar bar, not currently allowed in Zoning Ordinance).
## Zoning – Chicago & Suburbs Update

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<th>Trending to Allow</th>
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<td>Arlington Heights</td>
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<td>Buffalo Grove</td>
<td>Glenview (to revisit in future)</td>
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<td>Chicago</td>
<td>Lake Forest (informal consensus)</td>
<td>Morton Grove</td>
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<td>Skokie (potential action 9/16)</td>
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Taxation

- On April 13, 2015, the City Council adopted Ordinance 24-O-15 – Enactment of “Medical Cannabis Privilege Tax” establishing a 6% tax on all sales of medical cannabis or medical infused products to a dispensary.

- The Municipal Cannabis Retailers’ Occupation Tax (65 ILCS 5/8-11-22) – Starting 1/1/2020, the City may impose a tax on all persons engaged in the business of selling cannabis at retail locations.

- If the City opts to impose a tax, it may be imposed by .25% increments up to 3% of the gross receipts from the sales.

- Staff seeks confirmation that the Council seeks to set a sales tax for recreational sales.
Cannabis Offenses

- Minor Cannabis Offenses will begin expungement starting January 1, 2021
- Illinois State Police and the Circuit Courts will be handling the expungements

Possession sections in the City Code which need to be amended:
- Title 8, Chapter 13, “Marijuana” of the City Code will be amended to allow possession of cannabis within the City limits;
- Title 8, Chapter 14 “Drug Paraphernalia Control” will be amended to remove cannabis; and
- Title 9, Chapter 5, Section 10, “Alcoholic Beverages; Consumption/ Possession Public Property” will be amended to include cannabis pursuant to the Illinois Cannabis Regulation and Tax Act (HB 1438).
Employers have the authority to adopt reasonable and nondiscriminatory employment policies concerning drug testing, smoking, consumption, storage or use of cannabis in the workplace. This includes the authority to adopt a zero tolerance policy on recreational cannabis use.

**Primary considerations for the City Council:**

- Determine whether to allow or prohibit recreational cannabis outside the workplace;
  - Cannabis remains prohibited under federal law—adopting a cannabis-friendly employment policy has the potential to affect federal funding
- If recreational cannabis is allowed outside the workplace:
  - Identify any positions for which recreational cannabis use will be prohibited outside of the workplace (i.e. positions requiring CDL, sworn personnel with the Police and Fire Departments)
  - Evaluate pre-employment drug testing policy
  - Research available testing methods to identify impairment in the workplace
  - Evaluate disciplinary policy as it applies to positive test results
Personnel

- Evaluate pre-employment drug testing policy
  - Presently applicants for all City positions are to be tested for evidence of drug and alcohol use
  - Consider revising the policy to conduct pre-employment testing for only those positions for which recreational cannabis use will be prohibited

- Research available testing methods to identify impairment in the workplace
  - Identifying whether a positive drug test for cannabis is the result of use during work hours is extremely difficult
  - Review available options for testing for cannabis, particularly their ability to identify when it was used
  - Evaluate potential costs and other expenses of available tests (i.e. cost of urine test v. cost of saliva test)

- Evaluate disciplinary policy as it applies to positive test results
  - Incorporate amendments to the Right to Privacy in the Workplace Act requiring employer’s to provide an employee a reasonable opportunity to contest a determination that the employee was impaired at work
Personnel

Staff recommends:
- Proceed initially—and temporarily—with a zero tolerance policy
- Research employee policies of municipalities in states where cannabis is already legalized
- Engage in a dialogue with neighboring communities regarding costs and benefits of having a cannabis-friendly employee use policy
- Analyze potential for liability and other exposure to the City in adopting—as well as failing to adopt—a revised drug and alcohol policy
- Return in November/December 2019 with alternate proposals
Next Steps

September
• Continued Plan Commission Discussion/public hearing on recreational and medical dispensary regulations
• City Council Initial Discussion

October - December
• Zoning Ordinance – Regulations on recreational and medical dispensary regulations
• City Code revisions for possession and Taxation Ordinance to be considered
• Revision to City Lease Agreement for 1804 Maple for co-location space/PharmaCann

January 2020 and beyond
• Plan Commission to consider craft growers, infusers, and other cannabis related businesses
• Additional research and any other Code updates
• Evaluate in 6 months after implementation any Personnel Manual updates
Questions?