

ORDINANCE 2019-O-18

**AN ORDINANCE AUTHORIZING AND REGULATING
THE LEGAL MARKETING OF RECREATIONAL CANNABIS**

WHEREAS, the Village has long had in full force and effect a Municipal Code which includes a zoning code as chapter 154 thereof which establishes and maintains regulations for the purpose of improving and protecting the public health, safety, comfort, convenience and general welfare of the people as well as the use of land within the community; and

WHEREAS, the State of Illinois enacted the Cannabis Regulation and Tax Act (the Act), which pertains to the possession, use, cultivation, processing, transportation and dispensing of Recreational cannabis, which became effective June 25, 2019; and

WHEREAS, pursuant to the Act, the Village may enact reasonable zoning ordinances or resolutions not in conflict with the Act, regulating cannabis business establishments, including rules adopted governing the time, place, manner and number of cannabis business establishments, and minimum distance limitations between cannabis business establishments and locations the Village deems sensitive; and

WHEREAS, on August 13, 2019 the Village Board in Committee of the Whole referred a conceptual proposed amendment to the Municipal Code to the Planning and Zoning Board to codify potential regulations for Recreational cannabis facilities within the Village; and

WHEREAS, the Planning and Zoning Board conducted a public hearing, pursuant to due published notice as required by law, on September 10, 2019 and discussed a draft ordinance which would modify certain provisions of the Municipal Code to add a new chapter thereto containing overlay district regulations specific to the growing, processing and sale of cannabis; and

WHEREAS, the Planning and Zoning Board recommended approval of the proposed draft ordinance on September 10, 2019; and

WHEREAS, the Village Board takes note that a conditional use is the same as a special use. *Pioneer Tr. & Sav. Bank v. McHenry County*, 89 Ill. App. 2d 257, 268, 232 N.E.2d 816, 823 (2d Dist. 1967), *rev'd on other grounds*, 41 Ill. 2d 77, 241 N.E.2d 454 (1968), and that the Village's Zoning Code uses the term special use in lieu of conditional use; and

NOW, THEREFORE, BE IT ORDAINED by the Village Board of Trustees of the Village of Winthrop Harbor, Illinois as follows:

SECTION 1: Recitals. The recitals set forth above are incorporated herein.

SECTION 2: Cannabis Overlay Code Adoption. Chapter 154A is hereby added to the Winthrop Harbor Municipal Code and it shall hereafter read as set forth on Exhibit A hereto.

SECTION 3: The B-1 zoning district regulations set forth in Chapter 154 of the Winthrop Harbor Municipal Code are hereby amended by the addition of the following section 154.087:

§ 154.087 CONDITIONAL/SPECIAL USES: The following special uses relating to recreational cannabis may be permitted in specific situations in accordance with the procedures outlined in the Cannabis Overlay Code, Chapter 154A of this Title, as appropriate:

Recreational Cannabis Dispensing Organization.
Recreational Cannabis Craft Grower.
Recreational Cannabis Infuser Organization.
Recreational Cannabis Processing Organization.
Recreational Cannabis Transporting Organization.

SECTION 4: Subsection (B) of Section 154.085 describing the standards within the B-1 zoning district regulations is hereby amended and it shall hereafter read as follows (additions underlined, deletions ~~stricken~~):

§ 154.085(B) All business establishments shall be retail or service establishments dealing directly with consumers. All goods produced on the premises shall be sold on the premises where produced. Notwithstanding the foregoing, duly licensed Recreational Cannabis Craft Growers and Recreational Cannabis Infuser Organizations may produce products on the licensed premises for sale at other locations permitted by the Cannabis Regulation and Tax Act (P.A. 101-0027), consistent with any terms and conditions within the business' applicable Conditional Use Permit.

SECTION 5: The B-2 zoning district regulations set forth in Chapter 154 of the Winthrop Harbor Municipal Code are hereby amended by the addition of the following section 154.097:

§ 154.097: CONDITIONAL/SPECIAL USES: The following special uses relating to recreational cannabis may be permitted in specific situations in accordance with the procedures outlined in the Cannabis Overlay Code, Chapter 154A of this Title, as appropriate:

Recreational Cannabis Dispensing Organization.
Recreational Cannabis Craft Grower.
Recreational Cannabis Infuser Organization.
Recreational Cannabis Processing Organization.
Recreational Cannabis Transporting Organization.

SECTION 6: Subsection (C) of Section 154.095 describing the standards within the B-2 zoning district regulations is hereby amended and it shall hereafter read as follows (additions underlined, deletions ~~stricken~~):

§ 154.095 (C) All business establishments shall be retail or service establishments dealing directly with consumers. All goods produced on the premises shall be sold on the premises where produced. As a function of a permitted use, outdoor cafe dining and beer gardens are permitted, subject to the regulations provided in § [110.25](#) and § [110.31](#) of this code. Notwithstanding the foregoing, duly licensed Recreational Cannabis Craft Growers and Recreational Cannabis Infuser Organizations may produce products on the licensed premises for sale at other locations permitted by the Cannabis Regulation and Tax Act (P.A. 101-0027), consistent with any terms and conditions within the business' applicable Conditional Use Permit.

SECTION 7: The B-3 zoning district regulations set forth in Section 154.107 of the Winthrop Harbor Municipal Code are hereby amended by the addition of the following subsection C:

§ (C) **RECREATIONAL CANNABIS:** The following special uses relating to recreational cannabis may be permitted in specific situations in accordance with the procedures outlined in the Cannabis Overlay Code, Chapter 154A of this Title, as appropriate:

Recreational Cannabis Dispensing Organization.
Recreational Cannabis Craft Grower.
Recreational Cannabis Infuser Organization.
Recreational Cannabis Processing Organization.
Recreational Cannabis Transporting Organization.

SECTION 8: Subsection (B) of Section 154.106 describing the standards within the B-3 zoning district regulations is hereby amended and it shall hereafter read as follows (additions underlined, deletions ~~stricken~~):

§ 154.106(B) All ground floor business establishments shall be retail or service establishments dealing directly with customers. Notwithstanding the foregoing, duly licensed Recreational Cannabis Craft Growers and Recreational Cannabis Infuser Organizations may produce products on the licensed premises for sale at other locations permitted by the Cannabis Regulation and Tax Act (P.A. 101-0027), consistent with any terms and conditions within the business' applicable Conditional Use Permit.

SECTION 9: The Downtown Form Based Code zoning district regulations set forth in Section 154.078(C)(1)(e) of the Winthrop Harbor Municipal Code are hereby amended and it shall hereafter read as follows (additions underlined, deletions ~~stricken~~):

(e) Requires a special use permit. These uses require a special use permit (refer to §§ 154.280 through 154.286 Special Use Regulations) in order to occur in the districts in which they are listed and must follow any applicable development standards associated with the use as well as meet the requirements of the special use. Uses requiring a special use permit are defined in Table (C)(2) 1. Permitted Use Table. Special uses relating to

Recreational Cannabis require compliance with the procedures outlined in the Cannabis Overlay Code, Chapter 154A of this Title.

SECTION 10: The Use Requirements of retail uses set forth in Section 154.078(C)(c) of the Winthrop Harbor Municipal Code is hereby amended by the addition the following subsection (4):

4. Recreational Cannabis Dispensing Organization. A licensed recreational cannabis infusing organization may produce products on the licensed premises for sale at other locations permitted by the Cannabis Regulation and Tax Act (P.A. 101-0027), consistent with any terms and conditions within the business' applicable Conditional Use Permit.

SECTION 11: The Use Requirements of service uses set forth in Section 154.078(C)(d) of the Winthrop Harbor Municipal Code is hereby amended by the addition the following subsection (4):

4. Recreational Cannabis Infusing Organization. A licensed recreational cannabis infusing organization may produce products on the licensed premises for sale at other locations permitted by the Cannabis Regulation and Tax Act (P.A. 101-0027), consistent with any terms and conditions within the business' applicable Conditional Use Permit.

SECTION 12: The description of uses set forth in Table 154.078(C)(2)(1) of the Winthrop Harbor Municipal Code is hereby amended by the addition of Recreational Cannabis Dispensing Organization and by the addition of Recreational Cannabis Infuser Organization as special uses in DT-1, DT-2 and DT-3 zoning Districts.

SECTION 13: The List of Typical Uses in Retail set forth in Section Table 154.078(C)(3)(1) of the Winthrop Harbor Municipal Code is hereby amended by the addition of Recreational Cannabis Dispensing Organization under Neighborhood Retail.

SECTION 14: The List of Typical Uses in Service set forth in Section Table 154.078(C)(3)(2) of the Winthrop Harbor Municipal Code is hereby amended by the addition of Recreational Cannabis Infuser Organization under Neighborhood Service.

SECTION 15: The I-1 zoning district regulations set forth in Chapter 154 of the Winthrop Harbor Municipal Code are hereby amended by the addition of the following section 154.122:

§ 154.122 CONDITIONAL/SPECIAL USES: The following special uses relating to recreational cannabis may be permitted in specific situations in accordance with the procedures outlined in the Cannabis Overlay Code, Chapter 154A of this Title, as appropriate:

Recreational Cannabis Craft Grower Organization.
Recreational Cannabis Dispensing Organization.
Recreational Cannabis Infuser Organization.
Recreational Cannabis Processing Organization.

Recreational Cannabis Transporting Organization.
Recreational Cannabis Cultivation Organization.

SECTION 16: Subsection (B) of Section 154.120 describing the standards within the I-1 zoning district regulations is hereby amended and it shall hereafter read as follows (additions underlined, deletions ~~stricken~~):

(B) No retail sales or services shall be permitted except as incidental or accessory to a permitted use. Notwithstanding the foregoing, retail sales of cannabis and related products by a duly licensed recreational cannabis dispensing organization shall be permitted, consistent with any terms and conditions of the business' applicable Conditional Use Permit.

SECTION 17. Severability. If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

SECTION 18. Effective Date. This Ordinance shall be in full force and effect upon its passage and approval as required by law, provided that the actual possession, use, growing, processing, transportation, or sale of cannabis within the Village is authorized by the Act and this adopted code only on and after January 1, 2020.

ADOPTED THIS 15th day of OCTOBER, 2019.

AYES: (5) Hargett, Levin, Marabella, McCarthy, Whitmore
NAYS: (0)
ABSTENTIONS: (0)
ABSENT: (1) Weiss

APPROVED THIS 15th day of OCTOBER, 2019.

Mayor, Dr. Michael Bruno

ATTEST:

Village Clerk, Julie Rittenhouse

Exhibit A - Chapter 154A

RECREATIONAL CANNABIS MERCANTILE REGULATIONS.

§ 154A.001. Purpose and Applicability. It is the intent and purpose of this section to provide regulations regarding the cultivation, processing and dispensing of Recreational cannabis occurring within the corporate limits of the Village of Winthrop Harbor, Illinois. Such facilities shall comply with all regulations provided in the Cannabis Regulation and Tax Act (P.A. 101-0027) (the Act), as it may be amended from time-to-time, and regulations, promulgated thereunder, and the regulations provided below. In the event that the Act is amended, the more restrictive of the state or local regulations shall apply.

§ 154A.002: Definitions. The following terms shall have the meanings set forth hereinbelow:

RECREATIONAL CANNABIS BUSINESS ESTABLISHMENT: A Recreational cultivation center, craft grower, processing organization, infuser organization, dispensing organization or transporting organization.

RECREATIONAL CANNABIS CRAFT GROWER: 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, per the Cannabis Regulation and Tax Act, (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

RECREATIONAL CANNABIS CULTIVATION CENTER: A facility operated by an organization or business that is licensed by the Illinois Department of Agriculture to cultivate, process, transport and perform necessary activities to provide cannabis and cannabis-infused products to licensed cannabis business establishments, per the Cannabis Regulation and Tax Act, (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

RECREATIONAL CANNABIS DISPENSING ORGANIZATION: A facility operated by an organization or business that is licensed by the Illinois Department of Financial and Professional Regulation to acquire cannabis from licensed cannabis business establishments for the purpose of selling or dispensing cannabis, cannabis-infused products, cannabis seeds, paraphernalia or related supplies to purchasers or to qualified registered medical cannabis patients and caregivers, per the Cannabis Regulation and Tax Act, (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

RECREATIONAL CANNABIS INFUSER ORGANIZATION OR INFUSER: 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, per the Cannabis Regulation and Tax Act, (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

RECREATIONAL CANNABIS PROCESSING ORGANIZATION OR PROCESSOR: A facility operated by an organization or business that is licensed by the Illinois 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, per the Cannabis Regulation and Tax Act, (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

RECREATIONAL CANNABIS TRANSPORTING ORGANIZATION OR TRANSPORTER: 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 Community College Cannabis Vocational Training Pilot Program, per the Cannabis Regulation and Tax Act, (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

§ 154A.003. Conditional Use, Review Fee. Recreational Cannabis Business Establishment facilities, as defined herein, requiring approval of a conditional use in the respective districts in which they are requested shall be processed in accordance with §§154.283, 154.284, and 154.285 of this Title and §154A.004. The fee charged by the Village for reviewing any application for a Conditional Use Permit under this section shall be \$5,000.00.

§ 154A.004. Recreational Cannabis Facility Components. In determining compliance with §§ 154.283, 154.284 and 154.285 (Conditional/Special Uses) of this Title, the following components of the Recreational Cannabis Facility shall be evaluated based on the entirety of the circumstances affecting the particular property in the context of the existing and intended future use of the properties:

- 4.1 Impact of the proposed facility on existing or planned uses located within the vicinity of the subject property.
- 4.2 Proposed structure in which the facility will be located, including co-tenancy (if in a multi-tenant building), total square footage, security installations/security plan and building code compliance.
- 4.4 Hours of operation and anticipated number of customers/employees.
- 4.4 Anticipated parking demand based on § 154.185 and available private parking supply.
- 4.5 Anticipated traffic generation in the context of adjacent roadway capacity and access to such roadways.
- 4.6 Site design, including access points and internal site circulation.
- 4.7 Proposed signage plan.
- 4.8 Compliance with all requirements provided in § 154A.005, § 154A.006, § 154A.007, § 154A.008, § 154A.009, or § 154A.010, as applicable.
- 4.9 Compliance with the Village's Site Plan Review procedures as provided for in §§154.297 and 154.298.

- 4.10 Other criteria determined to be necessary to assess compliance with §§ 154.283, 154.284 and 154.285 of this Title.

§ 154A.005. Recreational Cannabis Craft Grower: In those zoning districts in which a Recreational Cannabis Craft Grower may be located, the proposed facility must comply with the following:

- 5.1 Facility may not be located within 1,000 feet of the property line of a pre-existing public or private nursery school, preschool, primary or secondary school, licensed child care facility, public park, public library, recreational center or arcade other than one licensed to operate Video Gaming Terminals and which prohibits access to persons under age 21 years. Learning centers and vocational/trade centers shall not be classified as a public or private school for purposes of this section.
- 5.2 Facility may not conduct any sales or distribution of cannabis other than as authorized by the Act.
- 5.3 For purposes of determining required parking, Recreational Cannabis Craft Grower shall be classified under § 154.185(B)(1), provided, however, that the Village may require that additional parking be provided as a result of the analysis completed through § 154A.003 and § 154A.004.
- 5.4 Petitioner shall file an affidavit with the Village affirming compliance with this section.

§ 154A.006. Recreational Cannabis Cultivation Center: In those zoning districts in which a Recreational Cannabis Cultivation Center may be located, the proposed facility must comply with the following:

- 6.1 Facility may not be located within 1,000 feet of the property line of a pre-existing public or private nursery school, preschool, primary or secondary school, licensed child care facility, public park, public library, recreational center or arcade other than one licensed to operate Video Gaming Terminals and which prohibits access to persons under age 21 years. Learning centers and vocational/trade centers shall not be classified as a public or private school for purposes of this section.
- 6.2 Facility may not conduct any sales or distribution of cannabis other than as authorized by the Act.
- 6.3 For purposes of determining required parking, Recreational Cannabis Cultivation Center shall be classified as a manufacturing use per § 154.185(B)(7), provided, however, that the Village may require that additional parking be provided as a result of the analysis completed through § 154A.003 and § 154A.004.
- 6.4 Petitioner shall file an affidavit with the Village affirming compliance with this section.

§ 154A.007. Recreational Cannabis Dispensing Organization: In those zoning districts in which a Recreational Cannabis Dispensing Organization may be located, the proposed facility must comply with the following:

- 7.1 Facility may not be located within 1,000 feet of the property line of a pre-existing public or private nursery school, preschool, primary or secondary school, licensed child care facility, public park, public library, recreational center or arcade other than one licensed to operate Video Gaming Terminals and which prohibits access to persons under age 21 years. Learning centers and vocational/trade centers shall not be classified as a public or private school for purposes of this section.
- 7.2 Facility may not conduct any sales or distribution of cannabis other than as authorized by the Act.
- 7.3 At least 75% of the floor area of any tenant space occupied by a dispensing organization shall be devoted to the activities of the dispensing organization as authorized by the Act.
- 7.4 Facility may be issued a permit to host on-site consumption of cannabis if located in a freestanding structure occupied solely by the dispensing organization and smoke from the facility does not migrate into an enclosed area where smoking is prohibited. The security plan for the facility required by § 154A.010 (Additional Requirements) shall also reflect adequate provisions to respond to disruptive conduct and over-consumption. The on-site consumption permit shall be reviewed annually and may be suspended or revoked by the Mayor following not less than three (3) days' notice and an evidentiary hearing, provided that the permittee may appeal such action to the Village Board as a final administrative remedy.
- 7.6 For purposes of determining required parking, said facility shall be classified under § 154.185(B)(1), provided, however, that the Village may require that additional parking be provided as a result of the analysis completed through § 154A.003 and § 154A.004.
- 7.7 Petitioner shall file an affidavit with the Village affirming compliance with this section.

§ 154A.008. Recreational Cannabis Infuser Organization: In those zoning districts in which a Recreational Cannabis Infuser Organization may be located, the proposed facility must comply with the following:

- 8.1 Facility may not be located within 1,000 feet of the property line of a pre-existing public or private nursery school, preschool, primary or secondary school, licensed child care facility, public park, public library, recreational center or arcade other than one licensed to operate Video Gaming Terminals and which prohibits access to persons under age 21 years. Learning centers and vocational/trade centers shall not be classified as a public or private school for purposes of this section.
- 8.2 Facility may not conduct any retail sales.
- 8.3 At least 75% of the floor area of any tenant space occupied by an infusing organization shall be devoted to the activities of the infusing organization as authorized by the Act. Facility may not conduct any sales or distribution of cannabis other than as authorized by the Act.

- 8.4 For purposes of determining required parking, said facilities shall be classified as a manufacturing use per § 154.185(B)(7), provided, however, that the Village may require that additional parking be provided as a result of the analysis completed through § 154A.003 and § 154A.004.
- 8.5 Petitioner shall file an affidavit with the Village affirming compliance with this section.

§ 154A.009. Recreational Cannabis Processing Organization: In those zoning districts in which a Recreational Cannabis Processing Organization may be located, the proposed facility must comply with the following:

- 9.1 Facility may not be located within 1,000 feet of the property line of a pre-existing public or private nursery school, preschool, primary or secondary school, licensed child care facility, public park, public library, recreational center or arcade other than one licensed to operate Video Gaming Terminals and which prohibits access to persons under age 21 years. Learning centers and vocational/trade centers shall not be classified as a public or private school for purposes of this section.
- 9.2 Facility may not conduct any retail sales.
- 9.3 At least 75% of the floor area of any tenant space occupied by a processing organization shall be devoted to the activities of the processing organization as authorized by the Act. Facility may not conduct any sales or distribution of cannabis other than as authorized by the Act.
- 9.4 For purposes of determining required parking, said facilities shall be classified as a manufacturing use per § 154.185(B)(7), provided, however, that the Village may require that additional parking be provided as a result of the analysis completed through § 154A.003 and § 154A.004.
- 9.5 Petitioner shall file an affidavit with the Village affirming compliance with this section.

§ 154A.010. Recreational Cannabis Transporting Organization: In those zoning districts in which a Recreational Transporting Organization may be located, the proposed facility must comply with the following:

- 9.1 Facility may not be located within 1,000 feet of the property line of a pre-existing public or private nursery school, preschool, primary or secondary school, licensed child care facility, public park, public library, recreational center or arcade other than one licensed to operate Video Gaming Terminals and which prohibits access to persons under age 21 years. Learning centers and vocational/trade centers shall not be classified as a public or private school for purposes of this section.
- 9.2 Facility may not conduct any retail sales.
- 9.3 The transporting organization shall be the sole use of the tenant space in which it is located. Facility may not conduct any sales or distribution of cannabis other than as authorized by the Act.

- 9.4 For purposes of determining required parking, said facilities shall be classified as a manufacturing use per § 154.185(B)(7), provided, however, that the Village may require that additional parking be provided as a result of the analysis completed through § 154A.003 and § 154A.004.
- 9.5 Petitioner shall file an affidavit with the Village affirming compliance with this section.

§ 154A.011. Additional Requirements: Petitioner shall install building enhancements, such as security cameras, lighting or other improvements, as set forth in the conditional use permit, to ensure the safety of employees and customers of the recreational cannabis business establishments, as well as its environs. Said improvements shall be determined based on the specific characteristics of the floor plan for a Recreational Cannabis Business Establishment and the site on which it is located, consistent with the requirements of the Act.

§ 154A.012. Co-Location of Cannabis Business Establishments. The Village Board may approve the co-location of a Recreational Cannabis Dispensing Organization with a Recreational Cannabis Craft Grower Center or a Recreational Cannabis Infuser Organization, or both, subject to the provisions of the Act and the Conditional Use criteria of § 154A.003 and § 154A.004. In a co-location, the floor space requirements of § 154A.007.3 and § 154A.008.3 shall not apply but the co-located establishments shall be the sole use of the tenant space.