

ORDINANCE NO. 2020-_____

AN ORDINANCE AMENDING TITLE 7, ENTITLED “PUBLIC PEACE, SAFETY AND MORALS,” TITLE 8, ENTITLED “HEALTH AND SANITATION,” AND TITLE 11, ENTITLED “VEHICLES AND TRAFFIC,” OF THE WESTCHESTER MUNICIPAL CODE

WHEREAS, the corporate authorities of the Village of Westchester (the “Village”) are expressly empowered to legislate to protect the health, safety and welfare of the residents of the Village; and

WHEREAS, the corporate authorities of the Village have previously approved legislation regulating and prohibiting the possession of cannabis; and

WHEREAS, on January 1, 2014, the Compassionate Use of Medical Cannabis Program Act became effective, which act authorizes licensed dispensaries, cultivation centers and registered qualifying patients to possess and/or use those amounts of cannabis as authorized by such act, without being subject to arrest or prosecution; and

WHEREAS, on January 1, 2020, the Cannabis Regulation and Tax Act (the “Act”) became effective, which Act authorizes the purchase, procurement, possession, consumption, use or transportation of cannabis and cannabis-infused products under the terms and conditions set forth in the Act, without being subject to arrest or prosecution; and

WHEREAS, the corporate authorities of the Village have determined that it is necessary to amend the Westchester Municipal Code to be consistent with the provisions of the Act; and

WHEREAS, the corporate authorities of the Village have determined that it is necessary to amend the Westchester Municipal Code to prohibit on-premises consumption of cannabis in tobacco retail stores.

NOW, THEREFORE, BE IT ORDAINED, by the President and Board of Trustees of the Village of Westchester, Cook County, Illinois, as follows:

Section 1 The facts and statements contained in the preambles to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. The title of Chapter 7.72, entitled “Drug Paraphernalia, Marijuana: Prohibitions,” of Title 7, entitled “Public Peace, Safety and Morals,” of the Westchester Municipal Code is hereby amended as follows:

Chapter 7.72 - Drug Paraphernalia, Cannabis: Prohibitions.

Section 3. Section 7.72.010, entitled “Definitions” of Chapter 7.72, entitled “Drug Paraphernalia, Cannabis: Prohibitions,” of Title 7, entitled “Public Peace, Safety and Morals,” of the Westchester Municipal Code is hereby amended as follows:

7.72.010 - Definitions.

As used in this chapter, unless the context otherwise requires:

(a)The term "cannabis" shall have the meaning ascribed to it in Section 3 of the "Cannabis Control Act", (720 ILCS 550/3) as if that definition was expressly stated.

(b) The term “cannabis paraphernalia” means equipment, products, or materials intended to be used for planting, propagating, cultivating, growing, harvesting, manufacturing, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, or otherwise introducing cannabis into the human body.

(c)The term "controlled substance" shall have the meaning ascribed to it in Section 102 of the "Illinois Controlled Substances Act", (720 ILCS 570/102), as if that definition was expressly stated herein.

(d)"Deliver" or "delivery" means the actual, constructive or attempted transfer of possession, with or without consideration, whether or not there is an agency relationship.

(e)"Drug paraphernalia" means all equipment, products and materials of any kind, other than Methamphetamine manufacturing materials as defined in Section 10 of the Methamphetamine Control and Community Protection Act (720 ILCS 646/10) and cannabis paraphernalia as defined in this Section, which are intended to be used unlawfully 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 a controlled substance in violation of the "Illinois Controlled Substances Act". Drug paraphernalia includes, but is not limited to:

- (1) Kits intended to be used unlawfully in manufacturing, compounding, converting, producing, processing or preparing a controlled substance;
- (2) Isomerization devices intended to be used unlawfully in increasing the potency of any species of plant which is a controlled substance;
- (3) Testing equipment intended to be used unlawfully in a private home for identifying or in analyzing the strength, effectiveness or purity of controlled substances;
- (4) Diluents and adulterants intended to be used unlawfully for cutting cannabis or a controlled substance by private persons;
- (5) Objects primarily intended to be used unlawfully in ingesting, inhaling, or otherwise introducing cocaine, into the human body including, where applicable, the following items:
 - i. Water pipes;
 - ii. Carburetion tubes and devices;
 - iii. Smoking and carburetion masks;
 - iv. Miniature cocaine spoons and cocaine vials;
 - v. Carburetor pipes;
 - vi. Electric pipes;
 - vii. Air driven pipes;
 - viii. Chillums;
 - ix. Bongs;
 - x. Ice pipes or chillers.
- (6) Any item whose purpose as announced or described by the seller or possessor is for use in violation of this chapter.

Section 4. Section 7.72.020, entitled “Sale, Delivery to or Possession of Drug Paraphernalia; Penalty; Public Nuisance” of Chapter 7.72, entitled “Drug Paraphernalia, Cannabis: Prohibitions,” of Title 7, entitled “Public Peace, Safety and Morals,” of the Westchester Municipal Code is hereby amended as follows:

7.72.020 - Sale, delivery to or possession of drug paraphernalia; penalty; public nuisance.

(a) It shall be unlawful for any person to knowingly possess an item of drug paraphernalia with the intent to use it in ingesting, inhaling or otherwise introducing a controlled substance into the human body, or for the purpose of preparing a controlled substance for that use. The provisions of this section shall not apply to persons legally authorized to possess hypodermic syringes or needles under the Hypodermic Syringes and Needles Act (720 ILCS 635/0.01 *et seq.*) or authorized to possess cannabis paraphernalia in connection with the use of cannabis under the Illinois Cannabis Regulation and Tax Act (410 ILCS 705/ *et seq.*) and the Illinois Compassionate Use of Medical Cannabis Program (410 ILCS 130/1 *et seq.*). In determining intent under this Section 7.72.020, the court, administrative hearing officer or other trier of fact may take into consideration the proximity of the controlled substance to the drug paraphernalia or the presence of controlled substance on or in the drug paraphernalia.

(b) It shall be unlawful for any person under the age of 21 to knowingly possess an item of cannabis paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing cannabis into the human body, or in preparing cannabis substance for that use, except as otherwise provided in the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 et seq.) and the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.). In determining intent under this Section 7.72.020, the court, administrative hearing officer or other trier of fact may take into consideration the proximity of the cannabis to the cannabis paraphernalia or the presence of cannabis on or in the cannabis paraphernalia.

(c) It shall be unlawful for any person to offer for retail sale or to sell at retail or to deliver for any commercial consideration any item of drug paraphernalia. It shall be unlawful for any person to offer for retail sale or to sell at retail or to deliver for any commercial consideration any item of cannabis paraphernalia, unless such person is employed and licensed as a dispensing agent by a dispensing organization. It shall be unlawful for any person to offer for retail sale or to sell at retail or to deliver for any commercial consideration any item of cannabis paraphernalia to any person under the age of 21. The provisions of this section shall not apply to the delivery of drug paraphernalia by a manufacturer of drug paraphernalia or to the sale at wholesale of drug paraphernalia by a manufacturer of drug paraphernalia.

(d) Any store, place, or premises from which or in which any item of drug paraphernalia is kept for retail sale, or offered for retail sale, or delivered for any commercial consideration, except by a manufacturer thereof, is hereby declared to be a public nuisance.

(e) The village attorney, upon direction of the village president and board of trustees, may commence an action in the Circuit Court of Cook County to abate the public nuisance as described herein.

Section 5. Section 7.72.040, entitled “Possession, use or delivery of cannabis” of Chapter 7.72, entitled “Drug Paraphernalia, Cannabis: Prohibitions,” of Title 7, entitled “Public Peace, Safety and Morals,” of the Westchester Municipal Code is hereby amended as follows:

7.72.040 - Possession, use or delivery of cannabis.

(a) It shall be unlawful for any person under 21 years of age to knowingly possess any quantity of any substance containing cannabis, unless permitted for a qualifying patient or caregiver pursuant to the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.).

(b) It shall be unlawful for any person who is a resident of this State to knowingly possess cannabis in excess of the following amounts:

1. 30 grams of cannabis flower;
2. 500 milligrams tetrahydrocannabinol (THC) in cannabis-infused products; and
3. 5 grams cannabis concentrate.

The possession limits contained herein are to be considered cumulative.

(c) It shall be unlawful for any person who is not a resident of this State to knowingly possess cannabis in excess of the following amounts:

1. 15 grams of cannabis flower;
2. 250 milligrams tetrahydrocannabinol (THC) in cannabis-infused products; and
3. 2.5 grams cannabis concentrate.

The possession limits contained herein are to be considered cumulative.

(d) It shall be unlawful for any person to possess or use cannabis in a school bus, or on the grounds of any preschool or primary or secondary school, unless permitted for a qualifying patient or caregiver pursuant to the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.).

(e) It shall be unlawful for any person to possess cannabis 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;

(f) It shall be unlawful for any person to use cannabis in any motor vehicle;

(g) It shall be unlawful for any person to possess or use cannabis in a private residence that is used at any time to provide licensed child care or other similar social service care on the premises;

(h) It shall be unlawful for any person to use cannabis in any public place or smoke cannabis in any place where smoking is prohibited under the Smoke Free Illinois Act or in retail tobacco stores, as defined in the Section 8.16.030 of the Westchester Municipal Code.

(i) It shall be unlawful for any person to use cannabis knowingly 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 Program Act (410 ILCS 130/1 et seq.);

(j) It shall be unlawful for any person to facilitate the use of cannabis by any person who is not allowed to use cannabis under the Westchester Municipal Code, the Cannabis Regulation and Tax Act or the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.).

(k) It shall be unlawful for any person to transfer cannabis to any person contrary to the Westchester Municipal Code, the Cannabis Regulation and Tax Act or the Compassionate Use of Medical Cannabis Program Act(410 ILCS 130/1 et seq.).

(l) It shall be unlawful for any person to knowingly permit the consumption of cannabis by a person under the age of 21 in his or her residence or any other private property under his or her control except when authorized for a qualifying patient or caregiver pursuant to the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.).

(m) It shall be unlawful for any person to cultivate cannabis unless permitted pursuant to the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.).

(n) It shall be unlawful for any person permitted to cultivate cannabis pursuant to the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.) to cultivate more than five (5) cannabis plants in excess of five (5) inches tall, per household; to cultivate cannabis in a place that is not an enclosed, locked space; or to store cannabis plants in a location that is subject to ordinary public view.

Section 6. Section 7.72.050, entitled “Seizure and forfeiture” of Chapter 7.72,” entitled “Drug Paraphernalia, Cannabis: Prohibitions,” of Title 7, entitled “Public Peace, Safety and Morals,” of the Westchester Municipal Code is hereby amended as follows:

7.72.050 - Seizure and forfeiture.

Any drug paraphernalia or substance containing a controlled substance that is the subject of a violation of this chapter shall be subject to seizure and subject to forfeiture upon a finding of guilty or finding of liable of any person for a violation of this chapter. Upon appropriate order of court or administrative hearing officer said drug paraphernalia and/or substance containing controlled substance shall be destroyed.

The provisions of this Section 7.72.050 shall not apply to any cannabis, cannabis paraphernalia, illegal property, or interest in legal property that is possessed, owned, or used in connection with the use of cannabis as allowed under the Illinois Cannabis Regulation and Tax Act (410 ILCS 705/ et seq.) and the Illinois Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.), or acts incidental to that use. The Illinois Cannabis Regulation and Tax Act (410 ILCS 705/ et seq.) and the Illinois Compassionate Use of Medical Cannabis Program Act does not prevent the seizure or forfeiture of cannabis exceeding the amounts allowed under the Act, nor does it prevent seizure or forfeiture if the basis for the action is unrelated to the cannabis that is possessed, manufactured, transferred, or used under the Illinois Cannabis Regulation and Tax Act (410 ILCS 705/ et seq.) and the Illinois Compassionate Use of Medical Cannabis Program Act.

Section 7. Subparagraph (i)(17) of Section 7.136.010, entitled “Definitions,” of Chapter 7.136, entitled “Chronic Nuisance Property/Abatement,” of Title 7, entitled “Public Peace, Safety and Morals,” of the Westchester Municipal Code is hereby amended as follows:

7.136.010 - Definitions.

...

- (i)(17) Unlawful possession, cultivation, manufacture, or delivery of cannabis, in violation of 410 ILCS 705/ *et seq.*, 720 ILCS 550/1 *et seq.* or Title 7, Chapter 7.72 *et seq.*, of the Westchester Village Code;

...

Section 8. Section 8.16.090, entitled “Exemptions,” of Chapter 8.16, entitled “Smoke Free Air Regulations,” of Title 8, entitled “Health and Sanitation,” of the Westchester Municipal Code is hereby amended as follows:

8.16.090 - Exemptions.

Notwithstanding any other provisions of this chapter, smoking is allowed in the following areas:

(1) Private residences or dwelling places, except when used as a child care, adult day care, or other healthcare facility or any other home-based business open to the public.

(2) Retail tobacco stores as defined in Section 8.16.030 of this chapter in operation prior to the effective date of this chapter, except that the consumption of cannabis is prohibited. The retail tobacco store shall annually file with the department by January 31st an affidavit 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. Any retail tobacco store that begins operation after the effective date of this chapter 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 smoke is prohibited.

(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. No more than twenty-five percent of the available rooms for rent in any single building 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.

(5) Private, outdoor golf courses, excluding enclosed structures where smoking is prohibited under the provisions of this chapter.

Section 9. Paragraph (F) of Section 11.35.020, entitled “Violations or Offenses Subject to Seizure and Impoundment,” of Chapter 11.35, entitled “Seizure and Impoundment of

Motor Vehicles Used in the Commission of Certain Offenses,” of Title 11, entitled “Vehicles and Traffic,” of the Westchester Municipal Code is hereby amended as follows:

11.35.020 - Violations or offenses subject to seizure and impoundment.

...

(F) Operation or use of a motor vehicle while unlawfully soliciting, possessing, or attempting to solicit or possess cannabis or a controlled substance, as defined by the Cannabis Control Act or the Illinois Controlled Substances Act, in violation of the Cannabis Control Act or the Illinois Controlled Substances Act;

...

Section 10. This Ordinance shall be in full force and effect ten (10) days after its passage and approval, according to law.

ADOPTED this 28th day of January, 2020, pursuant to a roll call vote as follows:

Angelo A. Calcagno	<u>A</u>	Frank Perry	<u>A</u>
Cathy Kuratko	<u>A</u>	Nick Steker	<u>A</u>
Tracy Hart Markey	<u>A</u>		
President Gattuso	<u>A</u>		

APPROVED this 28th day of January, 2020.

Paul Gattuso
Paul Gattuso, Village President

ATTEST:

Stanley V. Kolodziej
Stanley V. Kolodziej, Village Clerk