



**VILLAGE OF LINDENHURST**  
**Regular Plan Commission Meeting Agenda**  
**Wednesday, December 4, 2019**  
**7:00 p.m.**

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes from the Plan Commission Meeting of November 14, 2019
- IV. Communications & Correspondence
- V. New Business
  - A. Public Hearing: Ordinance 19-12-2144: Text Amendment for a Fitness Center as a Permitted Use in a Community Business District
  - B. Public Hearing: Ordinance 19-12-2145: Amending the Lindenhurst Ordinance to Prohibit Cannabis Business Establishments
- VI. Public Participation
- VII. Adjournment

LINDENHURST PLAN COMMISSION  
Regular Meeting Minutes  
November 6, 2019

**CALL TO ORDER**

Chairman Gajda called the meeting to order at 7:00 pm.

**ROLL CALL**

Present were Chairman Joy Gajda and Commissioners Andrew Aswad, Bob Buehler, William Douglas, Jon Feld, Chris Gheysen, and Philip Rovang.

Also in attendance were Village Administrator Clay Johnson, Village Attorney Julie Tappendorf, and Village Clerk Jody Stoughtenger.

**APPROVAL OF THE MINUTES**

Minutes from the Plan Commission Meeting of August 21, 2019 were presented for approval. Chairman Gajda made a motion to approve the minutes from the Plan Commission Meeting of August 21, 2019.

**VOICE VOTE:**

Ayes - 6, Nays – 0

Motion carried.

**OLD BUSINESS**

None

**NEW BUSINESS**

**A. Public Hearing: Special Use Permit and Developmental Standards Variance – 2108 E. Grand Avenue, Alliance for Humane Action for the operation of a spay and neuter animal clinic.**

Chairman Gajda opened the Public Hearing at 7:01pm.

Commissioner Aswad performed the swearing in of members from the public.

The Alliance for Humane Action (AHA), a tenant within Linden Plaza, filed a special use permit petition to operate a spay/neuter clinic for dogs, cats, and rabbits in Linden Plaza. Currently, AHA operates a resale store which helps fund limited offsite veterinary services for dogs, cats, and rabbits. Services are limited to spaying, neutering, and vaccinations at a reduced cost. AHA would like to perform these services in house to meet the increased demand. The group also hosts educational seminars and adoption events.

Within the Community Business (CB) zone, animal hospitals and veterinary clinics are allowed as a Special Use under certain conditions. Due to the proximity of Linden Plaza to the adjacent residential district, a Development Standards Variance for managing animal waste was determined necessary, as a result of discussion by the Commission.

Commissioner Gheysen made a motion, seconded by Commissioner Feld, to recommend a Special Use Permit and Development Standards Variance be granted to Alliance for Humane Action located at 2108 E. Grand Avenue, for the operation of a spay/neuter animal clinic with the condition that animal waste shall be properly managed. The Special Use shall be held by the current applicant only.

**ROLL CALL**

Ayes – 7 Chairman Gajda, Commissioners Aswad, Buehler, Douglas, Feld, Gheysen, and Rovang

Nays – 0

Motion carried

Chairman Gajda announced the recommendation for approval will be presented for consideration at the next Village Board meeting scheduled on Monday, November 11, 2019.

**PUBLIC PARTICIPATION**

None

**COMMUNICATIONS & CORRESPONDENCE**

Administrator Johnson shared an update on the cannabis ordinance, providing the sequence of events that will occur to pass the ordinance before year end. Administrator Johnson responded to questions from the Commission that included a summary of the community survey on the sale of cannabis and an update on the Grand Avenue Improvement project.

**ADJOURNMENT**

Commissioner Aswad made a motion, seconded by Commissioner Douglas, to adjourn the meeting.

**VOICE VOTE:**

Ayes - 6, Nays - 0.

Motion carried.

The meeting was adjourned at 7:44 pm.

Date Approved \_\_\_\_\_



## MEMORANDUM

**DATE:** November 27, 2019

**TO:** Chairman and Members of the Plan Commission

**FROM:** Clay T. Johnson, Village Administrator

**RE:** **Plan Commission Supplement – December 4, 2019 Meeting**

<p><b>Property Owner:</b> AT Lindenhurst IL, LLC</p> <p><b>Name of Applicant:</b> Steve Kogen, Fit 4 Kids</p> <p><b>Street Address of Property:</b> 2084 E. Grand Avenue</p> <p><b>Existing Zoning Classification:</b> Community Business (CB)</p>
--

### Summary of Request

Mr. Kogen was approached by the Village to bring his fitness programming and gymnasium for kids to Lindenhurst a few months back. He viewed a number of Lindenhurst properties, and ultimately decided to move forward with a location at 2084 E. Grand Avenue within Linden Plaza. For those that may recall, this address is the former location of the Xtreme Gaming business within the plaza. One hiccup to the business location process is the fact that private gyms and fitness centers are a use that is not included within our zoning code whatsoever. This would mean that not only is Mr. Kogen's use not approved, but similar uses like a 24-Hour Fitness or Gold's Gym would not be approved either.

### Approvals Sought

It is staff's position that a private gym use was probably just an oversight within the code, and believe it to be a compatible use within the Community Business (CB) zone. To that end, the Village Attorney has drafted an ordinance which would provide a text amendment to the code and allow private fitness centers as a permitted use within the CB Zone. The ordinance cites NAICS code 713940 which is broad enough to capture the use Mr. Kogen is suggesting. The draft ordinance that would be considered by the Village Board is included in your materials.

### Considerations

While the staff believes that fitness centers are a popular component of a modern, retail mix, the Plan Commission could choose to establish this use as a special use as opposed to it being permitted by right within the Community Business district.



**Action Requested**

By motion vote, the Plan Commission may provide a favorable recommendation of the text amendment ordinance to the Village Board.

**ORDINANCE NO. 19-12-2144**

**AN ORDINANCE AMENDING THE LINDENHURST ZONING ORDINANCE  
TO PERMIT FITNESS CENTERS IN THE CB COMMUNITY BUSINESS DISTRICT**

**VILLAGE OF LINDENHURST  
LAKE COUNTY, ILLINOIS**

**Published in Pamphlet Form by Authority of the  
President and Board of Trustees  
of the  
Village of Lindenhurst, Lake County, Illinois  
Date of Publication: \_\_\_\_\_**

**AN ORDINANCE AMENDING THE LINDENHURST ZONING ORDINANCE  
TO PERMIT FITNESS CENTERS IN THE CB COMMUNITY BUSINESS DISTRICT**

**WHEREAS**, the Village of Lindenhurst is a municipal corporation organized and existing under the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.; and

**WHEREAS**, pursuant to its authority under the Zoning Enabling Act, the Village has established zoning regulations in the Lindenhurst Zoning Ordinance; and

**WHEREAS**, from time-to-time, the Village reviews its Zoning Ordinance to determine whether the use regulations should be updated, and recently determined that it would be desirable and appropriate to permit fitness centers in the CB Community Business zoning district; and

**WHEREAS**, following publication of notice, the Plan Commission conducted a public hearing on December 4, 2019, to consider proposed amendments to the Lindenhurst Zoning Ordinance to allow fitness centers in the CB district; and

**WHEREAS**, following deliberation on the evidence and testimony during the public hearing, the Plan Commission submitted its recommendation to the Village Board concerning the proposed amendments to the Lindenhurst Zoning Ordinance; and

**WHEREAS**, the Village Board has determined that permitting fitness centers in the CB districts in the Village will further the public health, safety, comfort, morals and welfare of the community;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Board of Trustees of the Village of Lindenhurst, Lake County, Illinois, as follows:

**SECTION 1. Recitals.** The above recitals are incorporated into this Ordinance by reference.

**SECTION 2. Amendment to Table 5.103.** Subsection L, entitled “Amusements and Recreation,” of Table 5.103 of Section 5.103(A), entitled “Permitted and Special Uses in Nonresidential Districts,” of Section 159, entitled “Zoning Regulations,” of the Lindenhurst Village Code is amended by adding the following new use to Subsection L in proper alphabetical order:

Type of Use	NB	CB	CBR2	PBC	O	BK	M	I	RO
* * *									
<b>L. Amusements and Recreation</b>									
* * *									
<b><u>Fitness Centers (NAICS # 713940)</u></b>		<b>P</b>							
* * *									

**SECTION 3. Severability.** In the event a court of competent jurisdiction finds this ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

**SECTION 4. Repeal and Saving Clause.** All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or cause of action which shall have accrued to the Village prior to the effective date of this ordinances.

**SECTION 5. Effective Date.** This Ordinance shall be in full force and effect following its passage and approval as required by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Lindenhurst, Illinois, this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
**DOMINIC MARTURANO, VILLAGE PRESIDENT**

**ATTEST:**

\_\_\_\_\_  
Jody Stoughtenger, Village Clerk

**TRUSTEES**

Bill Anderson  
Patty Chybowsky  
Dawn Czarny  
Patrick Dunham  
Heath Rosten  
Dawn Suchy

**AYE**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NAY**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# NAICS CODE DESCRIPTION

[Return to Lookup Tools](#)

## NAICS Keyword Search

Submit

Enter Keyword or NAICS Code to Search

[Click here for Search Tips](#)

## 713940 - Fitness and Recreational Sports Centers

### Top Businesses by Revenue for 713940:

<a href="#">Life Time Inc</a>	Chanhassen	MN
<a href="#">St John Health System Inc</a>	Tulsa	OK
<a href="#">Equinox Holdings Inc</a>	New York	NY
<a href="#">24 Hour Fitness Worldwide Inc</a>	San Ramon	CA
<a href="#">Trustmark Mutual Holding Co</a>	Lake Forest	IL
<a href="#">Agi Holding Corp</a>	Ventura	CA
<a href="#">Affinity Group Holding LLC</a>	Oxnard	CA
<a href="#">Planet Fitness Inc</a>	Hampton	NH
<a href="#">Town Sports Intl Holdings Inc</a>	Jupiter	FL
<a href="#">Clubcorp Club Operations Inc</a>	Dallas	TX

## 713940 - Fitness and Recreational Sports Centers

This industry comprises establishments primarily engaged in operating fitness and recreational sports facilities featuring exercise and other active physical fitness conditioning or recreational sports activities, such as swimming, skating,

or racquet sports.

### Illustrative Examples:

Aerobic dance or exercise centers  
 Ice or roller skating rinks  
 Gymnasiums  
 Physical fitness centers  
 Handball, racquetball, or tennis club facilities  
 Swimming or wave pools

### Cross-References.

- Establishments primarily engaged in providing non-medical services to assist clients in attaining or maintaining a desired weight are classified in U.S. Industry [812191](#), Diet and Weight Reducing Centers;
- Establishments primarily engaged in providing personal fitness training services are classified in Industry [812990](#), All Other Personal Services;
- Establishments primarily engaged in operating health resorts and spas where recreational facilities are combined with accommodations are classified in Industry [721110](#), Hotels (except Casino Hotels) and Motels; and
- Recreational sports clubs (i.e., sports teams) not operating sports facilities are classified in Industry [713990](#), All Other Amusement and Recreation Industries.

<b><u>2007 NAICS</u></b>	<b><u>2012 NAICS</u></b>	<b><u>2017 NAICS</u></b>	<b><u>Index Entries for 713940</u></b>
713940	713940	713940	Aerobic dance and exercise centers
713940	713940	713940	Athletic club facilities, physical fitness
713940	713940	713940	Body building studios, physical fitness
713940	713940	713940	Dance centers, aerobic
713940	713940	713940	Exercise centers
713940	713940	713940	Fitness centers
713940	713940	713940	Fitness salons
713940	713940	713940	Fitness spas without accommodations
713940	713940	713940	Gymnasiums
713940	713940	713940	Gyms, physical fitness
713940	713940	713940	Handball club facilities

713940	713940	713940	Health club facilities, physical fitness
713940	713940	713940	Health spas without accommodations, physical fitness
713940	713940	713940	Health studios, physical fitness
713940	713940	713940	Ice skating rinks
713940	713940	713940	Physical fitness centers
713940	713940	713940	Physical fitness facilities
713940	713940	713940	Physical fitness studios
713940	713940	713940	Racquetball club facilities
713940	713940	713940	Recreational sports club facilities
713940	713940	713940	Rinks, ice or roller skating
713940	713940	713940	Roller skating rinks
713940	713940	713940	Spas without accommodations, fitness
713940	713940	713940	Sports club facilities, physical fitness
713940	713940	713940	Squash club facilities
713940	713940	713940	Strength development centers
713940	713940	713940	Swimming pools
713940	713940	713940	Tennis club facilities
713940	713940	713940	Tennis courts
713940	713940	713940	Wave pools
713940	713940	713940	Weight training centers

**VILLAGE OF LINDENHURST  
PUBLIC NOTICE REGARDING A HEARING ON A TEXT AMENDMENT  
REGARDING FITNESS CENTERS**

**PUBLIC NOTICE IS HEREBY GIVEN** that the Lindenhurst Plan Commission will conduct a public hearing on Wednesday, December 4, 2019 at 7:00 p.m., at the Lindenhurst Village Hall, 2301 E. Sand Lake, Lindenhurst, Illinois, to discuss and hear testimony about a proposed text amendment to the Village's zoning regulations to allow fitness centers (NAICS 713940) in the Community Business CB district. All persons interested in the application should attend and will be given an opportunity to provide written and oral testimony. The public hearing may be continued from time to time without further public notice.



**DATE:** November 27, 2019

**TO:** Chairman and Members of the Finance Committee

**FROM:** Clay T. Johnson, Village Administrator

**RE: Recreational Cannabis Text Amendment Ordinance**

As we approach the end of the year, the deadline on determining a disposition toward the sale of recreational cannabis inches ever closer. To ensure a legally defensible position, having an action either for or against the sale, growth, or commercial use (lounges) of cannabis should be taken before the legalization date of January 1<sup>st</sup>. To best prepare for this decision the Village has taken the following steps:

1. Staff prepared initial research which reviewed states who have legalized recreational marijuana and highlighted some of the implications of that policy on taxation, public health, and public safety.
2. The Village Board engaged in four public discussions on the new law at separate Village Board meetings on June 10, August 26, September 23, and most recently on November 11. Another discussion occurred at the Plan Commission level during our regular meeting on November 6 as an update on the decision making process. By the end of the year, there may be as many as six public meetings where the topic was discussed.
3. The Village Board directed staff to prepare a survey, polling individuals online regarding their thoughts and opinions on recreational cannabis and where, if at all, it should be located within the community.
4. Staff and elected officials have attended various forums on the topic of recreational cannabis held by the Lake County Municipal League, Illinois City/County Managers Association, and Illinois Association of Chiefs of Police.
5. Staff has met with all Village Board members to answer and questions and make any clarifications regarding the new law.

There are considerable unknown consequences of the legalization of recreational cannabis. At this time, it is difficult to anticipate what effect the new law will have on our law enforcement personnel – other than there will be one. We do not know what revenues will be generated by the state to offset the costs the Village may incur to police the new law. Should the retail sale of recreational cannabis be allowed within our



community, the market and resulting revenue to the Village for that operation is unknown. Since our last meeting the legislature's veto session has ended which brought forward some minor changes to the law. Some of these changes remove some uncertainties regarding the law, but some policy implications remain. The changes that occurred during the veto session are outlined in the attached email from Ancel Glink.

Pursuant to the direction provided by the Village Board at their regular meeting of November 11, the staff was directed to draft and submit an ordinance banning all cannabis businesses within the corporate boundaries of the Village. A public notice for this hearing was published in the Daily Herald. The full ordinance is enclosed with this memorandum. Because this is a matter relating to zoning and uses, the Plan Commission must provide their recommendation on this text amendment to the Village Board. The Plan Commission's recommendation will then be considered by the Village Board at their December 9<sup>th</sup> meeting.

Some general background on the law:

*The Cannabis Regulation and Tax Act (HB 1438) will legalize the sale, possession, and use of marijuana for recreational purposes for adults over 21 beginning on January 1, 2020. The bill has tremendous ramifications on Illinois law, economy, and local governments. While many of the effects of the law are somewhat unknown at this point, I think it is important to gain some understanding of provisions within the new legislation:*

- *Illinois residents over age 21 will be allowed to possess up to 30 grams of raw cannabis, 5 grams of cannabis concentrate, or cannabis-infused products up to 500 milligrams of THC.*
- *Must be purchased in a licensed dispensary and can be consumed on private property away from minors. Consumption is prohibited in "public places." A public place is any place where a person could reasonably be expected to be observed by others excluding private residences.*
- *Locations prohibiting use include schools, near minors, anywhere prohibited by the Smoke Free Illinois Act.*
- *Possession is illegal in motor vehicles unless in a proper container, and driving under the influence of cannabis is illegal.*
- *Dispensaries and cultivation centers must be approved by the State, some sites will have to require that the proposed use complies with local zoning ordinances.*



*Local Authority Regulating Sales*

*Municipalities have authority to prohibit or significantly limit the location of cannabis related businesses through local ordinances. This can be as broad as a general prohibition on these businesses across all zones. It also allows the municipality to allow certain types of cannabis related businesses like cultivation centers while limiting others like dispensaries. Broad authority is also granted to municipalities when it comes to on-premises consumption, should it be allowed within the community.*

*Along with sales taxes imposed by the state, county, and localities, the state has imposed additional taxes specific to cannabis businesses. Municipalities are authorized to impose a retailer occupation (sales) tax of up to 3% on final sales to consumers. Eight (8) percent of taxes collected related to cannabis sales to the Local Government Distributive Fund (LGDF) will be diverted to funding crime prevention programs and training for law enforcement.*

**ORDINANCE NO. 19-12-2145**

**AN ORDINANCE AMENDING THE LINDENHURST ZONING ORDINANCE  
TO PROHIBIT CANNABIS BUSINESS ESTABLISHMENTS**

**VILLAGE OF LINDENHURST  
LAKE COUNTY, ILLINOIS**

**Published in Pamphlet Form by Authority of the  
President and Board of Trustees  
of the  
Village of Lindenhurst, Lake County, Illinois  
Date of Publication: \_\_\_\_\_**

**AN ORDINANCE AMENDING THE LINDENHURST ZONING ORDINANCE  
TO PROHIBIT CANNABIS BUSINESS ESTABLISHMENTS**

**WHEREAS**, the Village of Lindenhurst is a municipal corporation organized and existing under the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.; and

**WHEREAS**, the Cannabis Regulation and Tax Act, 410 ILCS 705/1-1, et seq. (the “Act”), regulates the cultivation, sale, possession, and consumption of cannabis in Illinois; and

**WHEREAS**, pursuant to § 55-25 of the Act, the Village is authorized to enact ordinances to regulate or prohibit cannabis business establishments; and

**WHEREAS**, pursuant to its authority under the Zoning Enabling Act, the Village has established zoning regulations in the Lindenhurst Zoning Ordinance; and

**WHEREAS**, following publication of notice, the Plan Commission conducted a public hearing on December 4, 2019, to consider proposed amendments to the Lindenhurst Zoning Ordinance to prohibit cannabis business establishments in the Village; and

**WHEREAS**, following deliberation on the evidence and testimony elicited during the public hearing, the Plan Commission submitted its recommendation to the Village Board concerning the proposed amendments to the Lindenhurst Zoning Ordinance; and

**WHEREAS**, the Village Board has carefully reviewed the recommendation of the Plan Commission and considered the impacts that the cultivation, dispensing, processing, transporting and infusing of recreational cannabis could have within the Village; and

**WHEREAS**, the Village Board has determined that prohibiting cannabis business establishments in the Village at this time will further the public health, safety, comfort, morals and welfare of the community;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Board of Trustees of the Village of Lindenhurst, Lake County, Illinois, as follows:

**SECTION 1. Recitals.** The above recitals are incorporated into this Ordinance by reference.

**SECTION 2. Amendment to Part 3 of Section 159.** Part 3, entitled “Establishment Of Districts And General Zoning Provisions,” of Section 159, entitled “Zoning Regulations,” of the Lindenhurst Village Code is amended by adding the following new paragraph 159-3.205:

**“§ 159-3.205 CANNABIS BUSINESS ESTABLISHMENTS PROHIBITED**

No cannabis business establishment shall be permitted to be located in the Village. For purposes of this ordinance, “cannabis business establishments” are as defined in section 159-9.200 of this code and include craft growers, cultivation centers, dispensing organizations or dispensaries, infuser organizations or infusers, on-premises cannabis consumption establishments, processing organizations or processors, transporting organizations or transporters, and such other cannabis business establishments that may be authorized by the Cannabis Regulation and Tax Act.”

**SECTION 3. Amendment to Section 159-9.200.** Section 159-9.200, entitled “Definitions,” of Section 159, entitled “Zoning Regulations,” of the Lindenhurst Village Code is amended to add the following new definitions, in proper alphabetical order:

**“CANNABIS.** Cannabis shall have the same definition as “cannabis” set forth in Section 1-10 of the Cannabis Regulation and Tax Act, as amended.

**CANNABIS BUSINESS ESTABLISHMENT.** A cannabis business establishment means a cannabis dispensary, cannabis cultivation center, cannabis craft grower, cannabis infuser, cannabis transporter, cannabis processor, on-premises cannabis consumption establishment, and such other cannabis business establishments authorized under the Cannabis Regulation and Tax Act.

**CANNABIS CRAFT GROWER.** A cannabis craft grower means “craft grower” as defined in Section 1-10 of the Cannabis Regulation and Tax Act, as amended.

**CANNABIS CULTIVATION CENTER.** A cannabis cultivation center means “cultivation center” as defined in Section 1-10 of the Cannabis Regulation and Tax Act, as amended.

**CANNABIS DISPENSARY.** A cannabis dispensary means “dispensing organization” and “dispensary” as defined in Section 1-10 of the Cannabis Regulation and Tax Act, as amended.

**CANNABIS INFUSER.** A cannabis infuser means “infuser organization” or “infuser” as defined in Section 1-10 of the Cannabis Regulation and Tax Act, as amended.

**CANNABIS PROCESSER.** A cannabis processor means “processing organization” or “processor” as defined in Section 1-10 of the Cannabis Regulation and Tax Act, as amended.

**CANNABIS TRANSPORTER.** A cannabis transporter means “transporting organization” or “transporter” as defined in Section 1-10 of the Cannabis Regulation and Tax Act, as amended.

**ON-PREMISES CANNABIS CONSUMPTION ESTABLISHMENT.** An on-premises cannabis consumption establishment means a cannabis business establishment or other entity that is authorized or permitted to allow the on-premises consumption of cannabis.”

**SECTION 4. Severability.** In the event a court of competent jurisdiction finds this ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

**SECTION 5. Repeal and Saving Clause.** All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or cause of action which shall have accrued to the Village prior to the effective date of this ordinances.

**SECTION 6. Effective Date.** This Ordinance shall be in full force and effect following its passage and approval as required by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Lindenhurst, Illinois, this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
**DOMINIC MARTURANO, VILLAGE PRESIDENT**

**ATTEST:**

\_\_\_\_\_  
Jody Stoughtenger, Village Clerk

<b><u>TRUSTEES</u></b>	<b><u>AYE</u></b>	<b><u>NAY</u></b>
Bill Anderson	_____	_____
Patty Chybowski	_____	_____
Dawn Czarny	_____	_____
Patrick Dunham	_____	_____
Heath Rosten	_____	_____
Dawn Suchy	_____	_____

## Clay Johnson

---

**From:** Municipal Minute <jtappendorf@ancelglink.com>  
**Sent:** Wednesday, November 20, 2019 9:13 AM  
**To:** Clay Johnson  
**Subject:** Municipal Minute



---

[Contact Us](#) • [Join This List](#)

---

## Municipal Minute

### In This Issue...

- [Local Governments Prepare Responses to Cannabis Trailer Bill](#)
- [More Recent Articles](#)

## Local Governments Prepare Responses to Cannabis Trailer Bill

During last week's veto session, the General Assembly approved a "trailer bill" making technical and other changes to the legislation passed earlier this year authorizing recreational cannabis in Illinois. While the trailer bill still awaits the Governor's signature as of this writing, local governments should start thinking about how the bill may affect their responses to recreational cannabis.

### **Cannabis Businesses Regulations**

#### On-Premises Consumption

The trailer bill clarifies that municipalities may authorize on-premises consumption at a cannabis dispensary or at a "retail tobacco store" as defined in the Smoke Free Illinois Act. Many cigar lounges and hookah lounges are considered "retail tobacco stores." The amendment ends speculation about whether a municipality could authorize on-premises cannabis consumption at a typical bar or restaurant and confirms that only authorized dispensaries

and retail tobacco stores can have on-premises consumption. Importantly, the amendment would not change the authority of municipalities to prohibit or strictly regulate on-premises cannabis consumption.

### Cannabis Business Definitions

The trailer bill also adds “infusers” to the definition of “cannabis business establishments,” confirming that local governments can adopt ordinances governing time, place, manner, and number of cannabis infusers, in addition to other cannabis business establishments.

## **Cannabis Taxes**

### Dispensary Sales Tax

From the tax perspective, the trailer bill would allow municipalities and counties to file their certified cannabis sales tax ordinances with the Department of Revenue on or before:

April 1 for enforcement beginning July 1; or  
October 1 for enforcement beginning January 1.

Under the original law, enforcement of local cannabis sales taxes would not have started until September 1, 2020 at the earliest. While the trailer bill advances the start of local cannabis sales taxes, tax enforcement still does not coincide with the start of authorized cannabis sales on January 1, 2020.

### Home Rule and Non-Home Rule Sales Tax

While food for off-premises consumption is typically subject to a lower one percent sales tax, the trailer bill confirms that “food consisting of or infused with adult use cannabis” would be subject to the ordinary home rule or non-home rule sales tax rate.

## **Local Enforcement Ordinances**

Local governments may want to review their ordinances to ensure consistency with the state’s new cannabis laws, and to enforce appropriate cannabis laws locally through adjudications or circuit court. The trailer bill addresses a few issues local governments should consider for their own ordinances.

### Cannabis Paraphernalia

Under the trailer bill, adults will be able to possess and use cannabis paraphernalia, in addition to cannabis for personal use, beginning January 1, 2020. Some municipalities have locally adopted provisions of the “Drug Paraphernalia Act” prohibiting most drug paraphernalia possession, and the trailer bill amends the Act to exclude “cannabis paraphernalia” from the definition of “drug paraphernalia.” If this legislation is approved, local governments should make sure their drug paraphernalia ordinances are consistent with state law.

### Cannabis Use Prohibited in Parks

Using cannabis in any public place is prohibited, except in a dispensary or retail tobacco store authorized by a local government. “Public place” means any place where a person could reasonably be expected to be observed by others, including all parts of local government buildings. The trailer bill includes amendments explicitly making all local government parks, recreation areas, wildlife areas, or playgrounds a “public place” where cannabis use is prohibited.

### Advertising

State law restricts cannabis business advertising, including advertising near schools, playgrounds, and other listed sensitive places. However, the trailer bill confirms that “advertising” does not include the display of exterior signage displaying only the name of the licensed cannabis business.

### **Automatic Expungements**

The trailer bill does not change the schedule for law enforcement agencies to automatically expunge records for certain minor cannabis possession offenses. The first deadline of January 1, 2021 requires expungement of records created on or after January 1, 2013 and prior to June 25, 2019.

The trailer bill does confirm that, in response to an inquiry for expunged records, the law enforcement agency should reply as it does in response to inquiries when no records ever existed; however, the agency must provide a certificate of disposition or confirmation that the record was expunged to the individual whose record was expunged if such a record exists.

### **Employment Policies**

#### Public Safety Employees

The Cannabis Regulation and Tax Act does not authorize law enforcement officers, corrections officers, probation officers, or firefighters to use cannabis while on duty. The Right to Privacy in the Workplace Act prohibits discrimination against all employees for the use of “lawful products,” including cannabis, during non-working and non-call hours. Employees can be awarded actual damages, costs, and attorney’s fees for willful and knowing Right to Privacy Act violations.

The trailer bill would amend the Cannabis Act to state that “nothing in this Act prevents a public employer of law enforcement officers, corrections officers, probation officers, paramedics, or firefighters from prohibiting or taking disciplinary action for the consumption, possession, sales, purchase, or delivery of cannabis or cannabis-infused substances while on or off duty, unless provided for in the employer’s policies.” While nothing in the *Cannabis Act* prevents a public employer from disciplining the listed public safety employees for off-duty cannabis use, the trailer bill would not change the protections provided in the *Right to Privacy Act*.

Arguably, the General Assembly did not intend to adopt the trailer bill language only to have it rendered meaningless by the Right to Privacy Act. However, public employers should consult their attorneys before

adopting policies that discipline the listed public safety employees for use of cannabis during non-call and non-working hours due to potential liability under the Right to Privacy Act.

In addition, the trailer bill would prohibit discipline for the listed public safety employees based solely on the lawful possession or consumption of cannabis by members of the employee's household. The bill would also confirm that the Cannabis Act does not limit the right to collectively bargain the subject matters contained in the Cannabis Act.

### Random Drug Testing

If passed, the trailer bill would provide that the Cannabis Act will not create or imply a cause of action against an employer based on its reasonable workplace drug policies, including:

subjecting employees or applicants to reasonable drug and alcohol testing;

reasonable and nondiscriminatory random drug testing; and

discipline, termination of employment, or withdrawal of a job offer due to a failure of a drug test.

This most-recent proposed legislation will hardly be the last word on cannabis, so stay tuned to Ancel Glink's [Municipal Minute](#) and [Workplace Report](#) blogs as courts and the General Assembly continue to develop the state's new cannabis laws.

Authored by Daniel J. Bolin and the Ancel Glink Cannabis Response Team

Municipal Minute is authored by Julie Tappendorf, a partner at the Ancel Glink law firm in Chicago, to provide timely legal updates on topics of interest to local governments.



### **Related Stories**

- [Illinois Legislature to Consider Downstate Police & Fire Pension Fund Consolidation](#)
- [IDOR Issues Draft Rules on Parking Excise Tax](#)
- [Bill Would Restrict Local Authority Over Fence Alarms](#)

• [Email to a friend](#) • [View comments](#) • [Track comments](#) •

### **More Recent Articles**

- [IDOR Issues Draft Rules on Parking Excise Tax](#)
- [PAC Provides Guidance on "General Subject Matter" for Agenda Items](#)

- [Bill Would Restrict Local Authority Over Fence Alarms](#)
- [Bill Would Exempt Most Government Parking Lots From Parking Excise Tax](#)
- [Local Government Law Institute on December 4th](#)

[Safely Unsubscribe](#) • [Archives](#) • [Preferences](#) • [Contact](#) • [Subscribe](#) • [Privacy](#)

Email subscriptions powered by [FeedBlitz, LLC](#) • 365 Boston Post Rd, Suite 123 • Sudbury, MA 01776, USA

**VILLAGE OF LINDENHURST  
PUBLIC NOTICE REGARDING A HEARING ON  
PROPOSED TEXT AMENDMENTS TO THE ZONING ORDINANCE  
REGARDING CANNABIS BUSINESS ESTABLISHMENTS**

**PUBLIC NOTICE IS HEREBY GIVEN** that the Lindenhurst Plan Commission will conduct a public hearing on Wednesday, December 4, 2019 at 7:00 p.m., at the Lindenhurst Village Hall, 2301 E. Sand Lake, Lindenhurst, Illinois, to discuss and hear testimony about proposed text amendments to the Village's zoning ordinance to regulate cannabis business establishments in the Village. All persons interested in the application should attend and will be given an opportunity to provide written and oral testimony. The public hearing may be continued from time to time without further public notice.