TO: Committee of the Whole

FROM: Chief Marc Maton

THROUGH: George Schafer

SUBJECT: Recreational Cannabis Discussion

DATE: October 8, 2019

**Project Analysis**Recreational Cannabis Discussion

**Summary**This document summarizes the potential impact of the Cannabis Regulation and Tax Act effective January 1, 2020. The impact is divided into two sections. The first outlines concerns and potential negative impacts of the authorization of licensed establishments outlined in the legislation. The second section highlights concerns to public safety resulting from the public use of cannabis, including anticipated impact on law enforcement resources within the Village.

**Analysis**Public Act 101-0027 establishes license classes for cannabis cultivation, cannabis dispensaries (retail sales location), infusers (processors) and craft growers. (A fifth category of license established in the Act is for a Transporter license.)

The 2018 report to the Colorado General Assembly by the Colorado Division of Criminal Justice also addressed crime around retail cannabis locations. The report concluded that the primary crime related to retail locations in Colorado was burglaries to the establishments.

The Act permits retail license locations. The law allows municipalities through zoning authority to regulate the location of dispensaries within the village. A study of crime occurrence around existing Medical licensed cannabis dispensaries conducted by the Village of Lombard concluded that there was little crime-related activity at existing Medical Cannabis Dispensaries in the Chicago area. There was also very little impact on police resources or calls for service at the Dispensary locations.

There is information circulating that crime in the vicinity of dispensaries in Colorado has decreased after the opening of a cannabis business. That information is based upon non-existent data and has not been validated, according to Colorado authorities.

The Act permits on-premises consumption of cannabis as accessory uses to dispensaries. It also arguably allows on-premises consumption at other locations. The permitting of on-premises consumption is exclusive to the licensing authority of a municipality.

Since there is no maximum limit to the THC content of cannabis or cannabis products, the increased risk of impaired driving in the vicinity of the consumption site are worrisome. Unlike alcohol, which can safely be consumed below a level of intoxication, even limited ingestion of cannabis products will result in an intoxication level above the legal driving limit.

Public Act 100-027 establishes a new Craft license class. The language in the Act is not clear about whether the regulations and inventory tracking requirements imposed on cannabis cultivation centers will apply to the craft growers. Additionally, it is unclear whether cannabis use can occur on the premises of the craft grower business.

Cannabis infusion is the process of infusing another substance, usually an oil, with the flavor and aroma of cannabis. Cannabis edibles and other infused products is a growing industry. The edibles have the potential to contain high potencies of THC, with the danger of causing accidental overdosing. The law authorizes the issuance of licensing to produce and sell cannabis infused products. From a practical standpoint, businesses applying for cannabis dispensary licenses will also apply for infuser licenses, and the products will be sold together.

The Act permits a new license for businesses that are authorized to transport cannabis from cultivation centers to dispensaries. The transporter business will not be allowed to store product at their businesses or fleet terminals. Consequently, it is anticipated that the businesses will operate in the manner of other armored car businesses.

**Additional Concerns**

The advent of recreational cannabis and the prospective for increased adult consumption of cannabis has raised several concerns related to public safety.

The Colorado Hospital Association and the Colorado Department of Public Health report that

hospitalizations have almost doubled from 6,715 in 2012 to more than 11,439 in 2014 (latest data that is available). It is reasonably anticipated that there will be an initial spike in unanticipated acute intoxication, including undesirable side effects, and overdosing due to lack of familiarity of the user population with the potency of recreational cannabis. Colorado emergency rooms have seen a dramatic increase in both intoxicated and overdosing (Cannabinoid Hyperemesis Syndrome) subjects in the past several years. The high potency and THC content of infused edibles brings with it the risk of accidental overdose. News reports of high individuals jumping off bridges or out of windows after ingesting cannabis products are not infrequent in legalized states. Additionally, other states have seen frequent overdosing of edible products by children who accidentally ingest a cannabis infused product.

Also, in Colorado, traffic fatalities related to marijuana have skyrocketed: the percentage of marijuana fatalities in 2013 were 14.7% of all traffic fatalities and in 2016 were over 24%. The raw numbers killed in marijuana-related fatalities went from 71 in 2013 to 147 in 2016.

According to the Colorado Department of Investigations, crime has increased over 10% since

legalization, and violent crime has increased more than 18%. There were 481 fatalities in Colorado in 2013, increasing to 648 in 2017, mostly attributable to drivers testing positive for cannabis.

In a recent article in the Chicago Tribune, it was reported that a survey of Colorado drivers conducted by the Colorado Department of Transportation revealed that 69 percent of respondents reported that they had driven under the influence of marijuana at least once in the past year (and 27 percent admitted to driving high daily).

There is currently no validated portable drug testing device to test the impairment level of a driver. Field sobriety testing for persons under the influence of cannabis are different than alcohol related testing. Courts will require officers to be certified in Advanced Roadside Impaired Testing (ARIDE) in order to assess impairment. Although not required by law, many courts will prefer certified Drug Recognition Experts (DRE) to be involved in the investigation. A DRE certification requires 96 hours of specialized training, and annual recertification is time intensive and costly. Certification of all the officers in a police department will take several years and be costly for Illinois law enforcement agencies. (There currently exist only 159 DRE certified officers in Illinois.)

The measurement regarding legal impairment level (5 ng/ml) must be completed through a blood draw and subsequent analysis at the Illinois State Police (ISP) laboratory or private laboratory. Testing completed at the ISP laboratory can take up to 180 days and has no cost. If a blood sample is sent to a private laboratory, the laboratory fee is approximately $190 but results are obtained within 21 days. When officers conduct an investigation of driving under the influence of cannabis, timeliness is imperative as the psychoactive ingredient in cannabis, Delta 9 tetrahydrocannabinol (THC), dissipates from the blood stream quickly. Accordingly, officers conducting an investigation will need to obtain a blood sample fairly quick, reportedly less than two hours from ingestion, to obtain an accurate reading of the driver’s THC level.

Since there is no maximum limit to the THC content of cannabis or cannabis products, the increased risk of impaired driving in the vicinity of the consumption site are worrisome. Unlike
alcohol, which can safely be consumed below a level of intoxication, even limited ingestion of cannabis products will result in an intoxication level above the legal driving limit. It should be noted that the THC level in plant-based cannabis in the 1990’s was about 4%. However, plant-based cannabis that is available currently for medical purposes and, beginning January 1, for recreational purposes can exceed 30%. Furthermore, edible cannabis products can be as high as 65% and cannabis concentrates up to a 99% THC level. These more potent levels of cannabis products will have an impact on level and frequency of impaired drivers.

Even though the law specifically prohibits smoking of cannabis in defined public places, experience in other states has shown that there will be a significant usage in public space, resulting in increased complaints to the police and calls for service. The Act prohibits use of cannabis in any public space within reasonable view of the public. Conversely, it permits use of cannabis in the residence (and the public view prohibition does not apply to residential use). What is unclear is use in curtilage areas of a residence, such as a front porch, driveway and back yard. If use is permitted in curtilage locations, it is anticipated that police complaint calls will skyrocket. There needs to be legislative clarification on permitted use in these spaces.

The law allows landlords for rental properties (and HOA Associations for Condominium complexes) to determine permissiveness to smoke (similar to tobacco) in their buildings. The odor of burnt cannabis is so much stronger, pervasive and lingering compared with tobacco smoke. It is reasonably anticipated that law enforcement agencies will receive numerous complaints by residents of these buildings complaining about the secondary cannabis smoke from another building tenant.

States that have preceded Illinois in legalization have seen a steady increase in black market cannabis, the opposite outcome predicted by the proponents of legalization. In California, media is reporting that the illegal market has eclipsed the legal one, with illegal sellers outnumbering legal outlets by 3 to 1. More alarmingly, those states have seen an increased presence in illegal indoor cultivation locations, many controlled by organized criminal cartel organizations. Contrary to forecasts, black market cultivation has skyrocketed. The proliferation of illegal grow operations has been most visible in suburban bedroom communities in the states of California and Colorado. The prevalence and scope of the problem has overwhelmed both the expertise and staffing resources of smaller law enforcement agencies. While black market supply and illegal grow operations have been encountered historically in the Chicago area, what is notable in the other states was the presence and

diversity of new criminal groups now operating illegal grow operations in those states. This is a significant cause for concern for Illinois law enforcement agencies.

Another concern of law enforcement is the illegal diversion of cannabis to persons under 21. Cannabis use rates in Colorado have substantially increased in teen and college populations even though sales to persons under 21 is a prohibited. School resource officers in Illinois, in a just-released survey, are reporting an increase in marijuana-related incidents in their schools, in addition to a significant increase in vaping cannabis infused products.

Nationally, there is a lot of media reporting about incidents of vaping cannabis infused oils. The availability of vaping products will increase substantially after January 1. Law enforcement officers are not able to distinguish between tobacco infused products and those infused with cannabis without laboratory testing.

Ironically, the Cannabis Regulation Act removes any volume penalties for cannabis possession for persons under 21. All possession offenses become a business (ordinance ticket) offense under the Act, regardless of the possessed quantity. This will provide a huge incentive for illegal traffickers to recruit youth to transport illegal cannabis.

Another unfunded burden that the Act placed upon local agencies was the requirement to expunge all arrest records for past cannabis offenses. The Act did not restrict how far back in time agencies need to destroy records. Expungement for offenses stored in electronic report writing systems should be reasonably straight forward. Moving backward in time to records in microfilm and microfiches, and farther back to paper records, may become impractical in application. The guidance language in the statute is not clear. This will cause a significant drain in the resources of our records bureau for the next two years.

The Act maintains important protections for employers previously established under the Compassionate Use of Medical Cannabis Pilot Program Act of 2013 (Medical Cannabis Act), including the ability to enforce reasonable workplace policies such as "drug free" or "zero tolerance" policies and to impose discipline up to, and including, termination if an employee is impaired or under the influence of cannabis while in the workplace. It also precludes employees from being impaired or under the influence of cannabis if they are "on call." The language appears to allow employers to continue current drug policies, but it is anticipated that there will be court challenges to use of cannabis away from the workplace.

Labor experts are recommending that current polices be reviewed to be certain that the polices are well-defined and thorough.

**Conclusion and Recommendations**

If permitted by the Village, the allowance of permitted licensing for a retail location for cannabis sales or infused product sales should have minimal impact on crime occurrence or demand on police resources, providing on-premises consumption is not permitted at the site.

It is recommended that retail locations not be allowed to share common walls with neighboring business. The Chicago area has experienced an uptick in organized burglary crews accessing neighboring business through common walls, bypassing existing security systems. The higher level of entry protection required of a dispensary is meaningless if burglars enter businesses with a lower security posture and compromise common unsecured walls.

The Village of Lemont license should specifically spell out permission to do on-premises consumption. Requiring cannabis dispensaries to obtain a local "on-premises consumption" license will also provide municipalities with a legitimate justification to periodically inspect the licensed premises to ensure compliance with local regulations. It is recommended that the Village of Lemont not allow on-premises consumption to any business within the village.

The permitting of a transporter license should have minimal impact on crime or demand for police resources, as a transporter business is not permitted to store cash or cannabis on-site.

The hours of operation for retail establishments permitted under the law are from 6am until 10pm. It is unclear whether law allows municipalities to reduce the hours of operation. If municipalities are allowed to regulate the hours, it is recommended that the establishes not be permitted past 8pm.