

VILLAGE OF DOWNERS GROVE
Report for the Village
8/20/2019

SUBJECT:	SUBMITTED BY:
Consider Regulations and Taxes on Recreational Cannabis Businesses	David Fieldman Village Manager

SYNOPSIS

Staff is requesting Village Council discussion to consider regulations and taxes on recreational cannabis businesses.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 includes a *Strong, Diverse Local Economy* and *Stewards of Financial Sustainability*.

FISCAL IMPACT

After covering the costs of administration and record expungement, the State of Illinois will distribute 8% of the remaining revenue to local governments for prevention and training for law enforcement. The cost of administration and expungement for the state, and the specifics of how and when the funds would be distributed to local governments are currently undetermined. A trailer bill addressing this issue will be discussed by state legislators prior to January 1, 2020.

Municipalities may enact up to a 3% tax on gross sales of adult-use cannabis. The potential revenue to the Village of Downers Grove could range from an estimated \$0 - \$300,000 if the retail sale of recreational cannabis is authorized and a recreational marijuana business operates within the Village. Allowing cannabis business establishments in the Village does not guarantee that a cannabis business establishment will locate within the Village and does not guarantee that any revenue will be generated. Staff recommends that revenue projections be prepared at such time a recreational marijuana business begins to operate in the Village.

RECOMMENDATION

Action at the discretion of the Village Council.

BACKGROUND

The Use and Possession of Marijuana will be Legal in Illinois

The State of Illinois recently passed the Cannabis Regulation and Tax Act which has legalized the use of recreational marijuana beginning January 1, 2020. The Act will allow any Illinois resident over the age of 21 to possess and use recreational marijuana in limited quantities. The State will issue a total of up to 500 recreational dispensary licenses by 2022 according to a graduated scale. The Chicago-Naperville, Elgin region – within which Downers Grove is located – is allowed up to 47 licenses within the region.

Municipalities **may not** restrict the private consumption of cannabis authorized under the Act, but have the capability to establish certain ordinances to regulate cannabis business establishments (dispensary, cultivation, craft growing, infuser, processing, transportation).

Cannabis Regulation and Tax Act – Permitted Adult-Use

Residents over the age of 21 may possess a cumulative amount of:

- Up to 30 grams of cannabis flower
- Up to 500 milligrams of THC in a cannabis-infused product
- Up to 5 grams of cannabis concentrate

Non-Illinois residents may possess up to half of these amounts

Outlined below are items for the Council to consider for regulating recreational cannabis businesses under the Cannabis Regulation and Tax Act.

Should Cannabis Businesses be Allowed to Operate in the Village?

The Act allows local governments to establish an ordinance prohibiting recreational cannabis businesses within the Village. While local governments can prohibit recreational cannabis businesses, they are required to allow medical cannabis dispensaries, subject only to local zoning provisions. Local governments do not have the jurisdiction to restrict the private consumption of cannabis.

It should be noted, in 2013 the Village established zoning regulations for medical marijuana businesses. More information is available [here](#).

If Cannabis Businesses Are Allowed, What Should the Zoning Regulations Be?

Local governments that authorize cannabis business establishments may regulate businesses through zoning restrictions provided they are “reasonable” and “not in conflict” with the Act. The time, place, manner, and number of cannabis establishments, including the minimum distance between cannabis businesses and locations the Village deems sensitive, can be regulated. The Act prohibits a new cannabis dispensary from locating within 1500 feet of another dispensary. The Village may establish civil penalties for violation of the above ordinances.

Should On-Premise Consumption be Allowed?

In addition to the zoning regulations outlined above, local governments may authorize the on-premise consumption of cannabis in a cannabis business establishment.

Should the Sale of Cannabis be Taxed by the Village?

The Village may enact an ordinance or resolution establishing a Municipal Cannabis Retailers’ Occupation Tax on recreational cannabis products up to 3% of the purchase price. Cannabis purchased under the Compassionate Use of Medical Cannabis Pilot Program Act is excluded from this tax.

Options for Policy Direction

In accordance with the Cannabis Regulation and Tax Act staff has identified two options for Council consideration:

Option A - Prohibit Cannabis Business Establishments from Operating in the Village

Under this option, Council would direct staff to prepare an ordinance prohibiting the establishment of recreational cannabis businesses. Prohibiting cannabis business establishments does not restrict the private consumption of cannabis authorized under the Cannabis Regulation and Tax Act.

If the Village Council directs this option, staff would prepare two ordinances for Council review and action, as summarized below:

Village Code Amendment - An ordinance prohibiting the operation of recreational cannabis businesses would be presented to the Council for consideration at the next available Council meeting.

Zoning Ordinance Amendments - An ordinance amending portions of the Zoning Ordinance to specifically state that recreational cannabis businesses are not allowed to operate in any zoning district would be prepared. The Zoning Ordinance amendments would be considered by the Plan Commission at a public hearing and then presented at a future Council meeting for Village Council consideration. The process for amending the Zoning Ordinance would take about eight to ten weeks.

Option A: Prohibit Cannabis Businesses - Required Tasks and Timeline	Estimated Date
1. Village Council directs to prohibit cannabis business establishments	9/3/2019
2. Ordinance prohibiting cannabis business establishments presented to Village Council for approval	September 2019
3. Zoning ordinance text amendment prohibiting cannabis business establishments presented to the Plan Commission for review	October 2019
4. Zoning ordinance amendments presented to Village Council under First Reading	November 2019
5. Village Council approves zoning ordinance amendments	November & December 2019

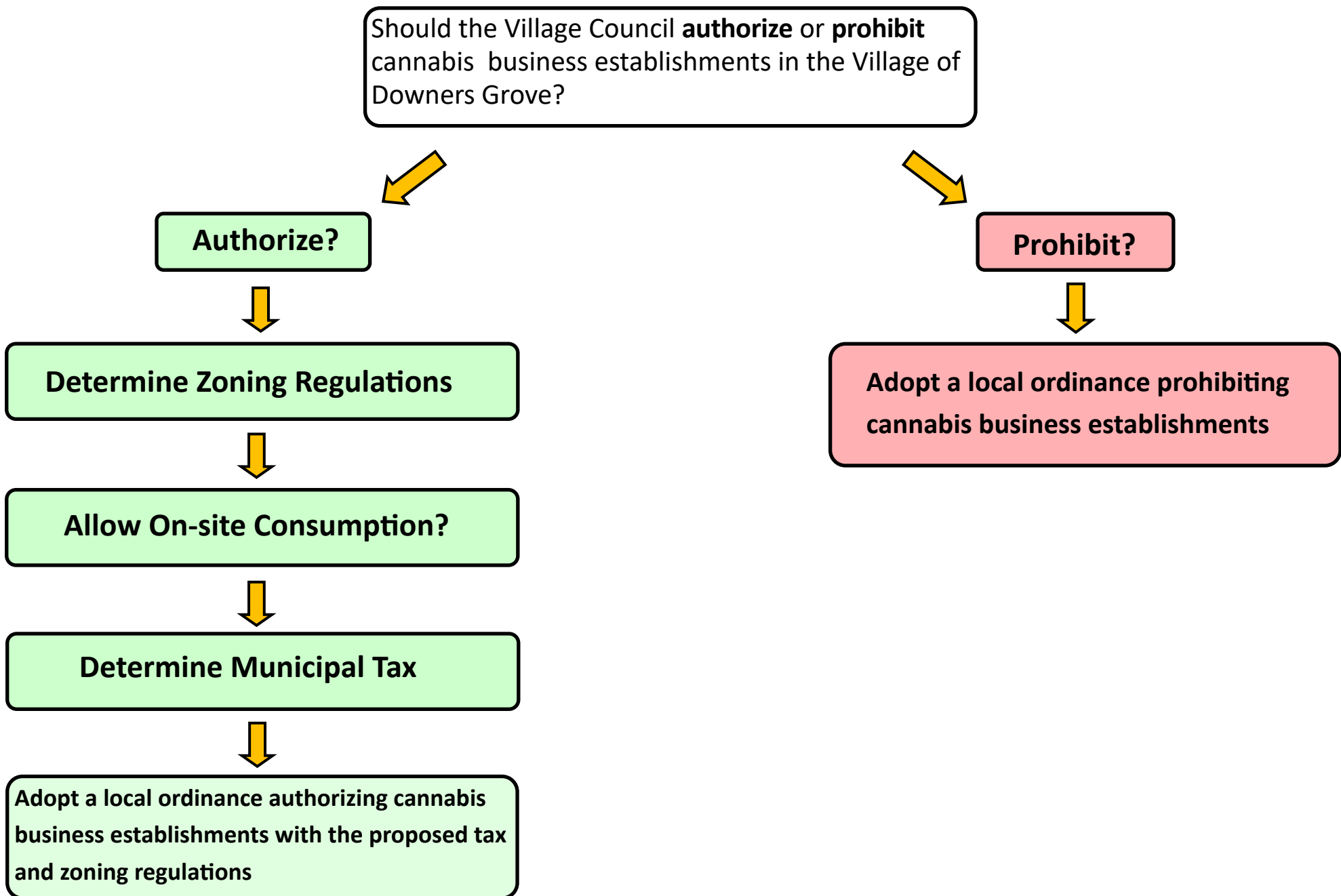
Option B – Direct Staff to Prepare the Necessary Information to Consider Allowing Recreational Cannabis Businesses

If the Council directs this option, staff would prepare information for Council review and discussion of the following topics:

Option B: Direct Staff to Prepare the Necessary Information to Consider Allowing Recreational Cannabis Businesses – Required Tasks and Timeline	Estimated Date
1. Village Council directs to consider authorizing cannabis business establishments	9/3/2019
<p>2. A series of meetings will be held for Village Council to provide direction on whether to allow recreational cannabis businesses. Should the Village Council elect to authorize cannabis business establishments, the Village Council would need to provide direction on the following regulations:</p> <ul style="list-style-type: none"> • Update relevant definitions in the zoning ordinance • What type (dispensary, cultivation, craft growing, infuser, processing, transportation) of cannabis business establishments will be allowed • The number of establishments allowed • Which zoning districts establishments will be allowed to operate • Allowable hours of operation • Whether establishments would be a permitted or special use • Any distance requirements from areas such as schools, churches and government buildings • Any separation requirements between cannabis businesses • On-site consumption regulations • The tax rate, if any, to be applied to the sale of cannabis 	September 2019
3. If authorized - Zoning ordinance text amendment authorizing cannabis business establishments presented to the Plan Commission for review	October 2019
4. If authorized - Zoning ordinance amendments presented to Village Council under First Reading	November 2019
5. If authorized - Village Council approves zoning ordinance amendments and any other applicable code changes	November & December 2019

ATTACHMENTS

Council Decision Making Flowchart
 IML Cannabis Adult-Use Fact Sheet
 FAQs



FACT SHEET

Adult-Use Cannabis

Public Act 101-0027 creates the Cannabis Regulation and Tax Act and was signed into law by Governor JB Pritzker on June 25, 2019. Effective January 1, 2020, the Act legalizes the possession and private use of cannabis for Illinois residents over 21 years of age.



7/15/19

LOCAL REGULATION OF CONSUMPTION

Municipalities may not restrict the private consumption of cannabis that is authorized by the Act. However, the Act prohibits the use of cannabis in public places, schools and child care facilities among other locations. Municipalities may adopt and enforce local ordinances to regulate possession and public consumption of cannabis so long as the regulations and penalties are consistent with the Act.

HOME GROW LIMITED TO MEDICAL PROGRAM PARTICIPANTS

Home grow cannabis will be authorized only for medical cannabis program participants, and is limited to five plants in their residence and subject to specified restrictions. Home grow of recreational cannabis by non-medical participants is prohibited. [More information about the medical cannabis program is available via this link.](#)



ZONING

The Act preserves local zoning authority and directly authorizes municipalities to prohibit (opt out) or significantly limit the location of cannabis businesses by ordinance. Municipalities will have the authority to enact reasonable zoning regulations that are not in conflict with the act. This would include the authority to opt out of either commercial production or distribution (dispensaries) of adult-use cannabis within their jurisdiction. Municipalities also may enact zoning ordinances and regulations designating the time, place, manner and number of cannabis business operations, including minimum distances between locations through conditional use permits.

BUSINESS REGULATION

In addition to zoning authority, municipalities will have the authority to allow for on-premise use of cannabis at locations to be determined locally. The Act anticipates that local authorities will engage in inspections of cannabis-related businesses. Municipalities may establish and impose civil penalties for violations of the local ordinances and regulations.



LOCAL REVENUE

Municipalities, by ordinance, may impose a Municipal Cannabis Retailers' Occupation Tax on adult-use cannabis products of up to 3% of the purchase price, in .25% increments. Counties may impose up to 3.75% in unincorporated areas, in .25% increments. The taxes imposed under this Act shall be in addition to all other occupation, privilege or excise taxes imposed by the State of Illinois or by any unit of local government, such as sales tax.



SMOKE FREE ILLINOIS ACT

The Act applies the restrictions of the Smoke Free Illinois Act on smoking cannabis, and provides that property owners may prohibit the use of cannabis by any guest, lessee, customer or visitor. In addition, lessors may prohibit cultivation of cannabis by their lessees.

EMPLOYER PROVISIONS

The Act provides employer protections including that nothing in the enactment prohibits employers from adopting reasonable zero-tolerance or drug-free workplace employment policies concerning drug testing, smoking, consumption, storage or use of cannabis in the workplace or while on-call. These policies must be applied in a nondiscriminatory manner. Employers may prohibit the use of cannabis by employees in the workplace, and engage in discipline, including termination, for violations of those policies and workplace rules.

STATE LICENSING

The Act authorizes the production and distribution of cannabis and cannabis products through state-licensed cultivators, craft growers, infusers, transporters and dispensaries. Cannabis transporters will be separately licensed by the Act, as well. A market study due in March 2021 will inform future licensing. The state will issue licenses according to a graduated scale. By the end of the first year, there will be up to 295 dispensing organizations. The Act will allow up to 500 dispensing organizations by January 1, 2022. Cultivators will be capped at 50, and 100 craft growers will be allowed. By that same date, 100 infusers will also be authorized to be licensed.

GRANTS AND INVESTMENT

The Act establishes the Restore, Reinvest and Renew (R3) Program to invest in communities historically impacted by economic disinvestment and violence. The Illinois Criminal Justice Information Authority (ICJIA) will identify R3 areas that qualify for funding, and grants will be awarded by the R3 Board. A 22-member R3 Board will award grants throughout the state, subject to an application process and the Government Accountability and Transparency Act (GATA); the R3 Board shall be chaired by the Lt. Governor.

SOCIAL EQUITY

The Act provides for a social equity program to establish a legal cannabis industry that is accessible to those most adversely impacted by the enforcement of drug-related laws in this state, including cannabis-related laws. Qualifying social equity applicants may be awarded financial assistance and incentives if they are interested in establishing cannabis related businesses.

DECRIMINALIZATION AND EXPUNGEMENTS

A significant portion of the Act addresses the decriminalization of cannabis through mandatory and discretionary expungements of criminal convictions relating to non-violent cannabis offenses.

STATE REVENUE

State revenues derived from the Cannabis Regulation and Tax Act will be deposited into the Cannabis Regulation Fund. The funds will be distributed to multiple state agencies for implementation of the Act. The legalization of adult cannabis also includes a new source of Local Government Distributive Fund (LGDF) dollars. A portion of the Cannabis Regulation Fund revenues (8% of deposits) will go to local governments, through LGDF, which will be used to fund crime prevention programs, training and interdiction efforts. The Cannabis Regulation Fund is derived from moneys collected from state taxes, license fees and other amounts required to be transferred into the Fund.



Recreational Cannabis FAQ's

The following list of Frequently Asked Questions about Recreational Cannabis was published by the Village of Lombard and modified for the Village of Downers Grove

1. **When was cannabis made legal in Illinois?**

On Tuesday 6/25/2019, Governor JB Pritzker signed [Illinois House Bill 1438](#), better known as the [Cannabis Regulation and Tax Act \(CRTA\)](#), thus legalizing the consumption and possession of cannabis for adults 21 and older in Illinois.

2. **Can the consumption/possession of cannabis be banned by a local municipality like Downers Grove?**

No, municipalities cannot ban or override the CRTA.

3. **Will the Village have any regulatory abilities?**

Yes. When it comes to restrictions, municipalities have the ability to:

- ban the selling of recreational cannabis within Village limit
- dictate the amount of legal dispensaries within the Village
- determine how cannabis businesses are operated such as hours of operation
- dictate the location of cannabis businesses as they relate to points of interest such as schools, churches, government buildings, and liquor stores.
- regulate the zoning of cannabis businesses in specific districts

4. **What regulatory abilities, if any, do business owners and landlords have?**

Any person, business, public entity, or landlord may prohibit the use of cannabis on private property.

5. **If the sale of recreational cannabis were to be allowed in Downers Grove, how many licenses would be issued?**

While many individual cities have a limitation on the amount of recreational cannabis facilities (dispensaries) that are allowed within their limits, Downers Grove is part of a larger Bureau of Labor Statistics Region within the state. The region Downers Grove is a part of is the Chicago-Naperville, Elgin region. The State is allowing up to 47 licenses within the region.

6. Who can legally purchase and consume cannabis?

As a result of the new State legislation, the consumption of cannabis as of 1/1/2020, will be treated similarly to that of the consumption of alcohol with any Illinois resident, or non-resident, ages 21 or over, now being able to purchase and consume cannabis.

7. Who can legally grow and sell recreational cannabis?

Only licensed businesses will be able to legally grow and sell cannabis. Medical cannabis patients will be allowed to grow up to five plants each within their home.

8. What will the Village's role be in the licensing process?

The Village plays no role in the licensing process as it is left up to the Department of Financial and Professional Regulation to select and process those individuals attempting to obtain a license.

9. How much cannabis may an individual possess?

Illinois residents may possess up to:

- 30 grams, or just over one ounce of "flower"*
- 5 grams of cannabis concentrate*
- 500 milligrams of THC - the chemical that makes users high – in a cannabis infused product such as gummies, candy, other consumable products (referred to as "edibles"), or tinctures, and lotions*

Non-Illinois residents may legally possess up to ½ of these amounts.

10. What action is required by the Village Council to allow recreational cannabis to be sold in Downers Grove?

The Village Council would need to amend the Village zoning ordinance to authorize the sale of recreational cannabis by cannabis business establishments and approve of a Municipal Cannabis Retailers' Occupation Tax. The Illinois Municipal Code requires that a public hearing be conducted by the Plan Commission before any amendment to a zoning ordinance.

11. Will cannabis consumption be allowed in public spaces?

No, the consumption of cannabis in public will be considered unlawful.

12. Where will consumption be allowed?

The consumption of cannabis will be allowed on private property or potentially, specifically designated establishments such as dispensaries or smoking lounges.

13. Are there any changes to existing medical cannabis laws?

Yes; the list of conditions that are covered under the use of medical cannabis was expanded to now include chronic pain, autism, migraines, irritable bowel syndrome, osteoarthritis, and anorexia.

14. Is the sale of medical cannabis currently allowed in Downers Grove? If so, where?

Yes. The locations where medical cannabis businesses may locate, subject to special use approval, can be found [here](#). There are no medical cannabis businesses currently located in the Village of Downers Grove.

15. How is cannabis taxed?

Sales will be taxed at 10% for cannabis with THC levels at or less 35%; 25% for cannabis with THC levels above 35%; and 20% for cannabis infused products such as edibles. This is in addition to standard state and local sales taxes. Additionally, municipalities may add a special tax of up to 3% and counties may add a special tax up to 3.75% in unincorporated areas.

16. How will the potential tax revenue generated be used?

Within the bill, any government proceeds associated with the sale of recreational cannabis was established as follows:

- 20% to State mental health services and substance abuse programs*
- 10% to pay unpaid State bills*
- 35% to the State General Revenue Fund*
 - 2% to public education and safety campaigns*
 - 8% to Local Government, for prevention and training for law enforcement*
 - 25% for identified social equity programs*

17. How will the potential tax revenue from the (3%) tax be used by Downers Grove?

Currently, the Village has no plans in place for these potential funds.

18. How do federal laws affect Illinois' law?

Although cannabis remains illegal at the federal level, federal law enforcement has rarely interfered with individuals possessing the state regulated legal amount or businesses complying with state enforced programs. Any questions related to

Federal or State regulations should be directed to the proper agencies.

19. How does recreational cannabis affect criminal records?

Illinois Governor JB Pritzker has stated that he will pardon past convictions for possession of up to 30 grams, with the attorney general going to court to delete public records of a conviction or arrest for the now legal amount. Regarding possession of 30-500 grams, an individual or a state's attorney may petition the court to vacate or expunge the conviction.

20. What are some potential impacts to the State's decision to allow recreational marijuana use when it comes to policing?

It is reasonable to assume that the legalization of cannabis will increase the demand for police services as well as the number of drug impaired drivers on our roadways, due to the state-wide allowance of marijuana, regardless of whether or not such a facility is located within the city limits of Downers Grove.