

**ORDINANCE 01-2020  
AN ORDINANCE AMENDING  
CHAPTER 3 OF TITLE 5 OF THE VILLAGE CODE  
REGARDING CANNABIS ENFORCEMENT**

**WHEREAS**, the Village of Gilberts is an Illinois municipal corporation operating in accordance with 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 recreational cannabis in Illinois; and

**WHEREAS**, Section 55-90 of the Act prohibits municipalities from regulating the cultivation, sale, possession and consumption of recreational cannabis except as provided in the Act; and

**WHEREAS**, the Act does not affect the Village’s ability to prohibit unauthorized possession and use of cannabis by persons under 21 years of age, 410 ILCS 5/10-5; and

**WHEREAS**, the Act does not affect the Village’s ability to prohibit unauthorized possession of drug paraphernalia (excluding cannabis paraphernalia) by persons 21 years of age or older, 720 ILCS 600/3.5; and

**WHEREAS**, the Village may impose fines upon cannabis other than as defined in the Cannabis Control Act, 720 ILCS 550/17.5; and

**WHEREAS**, the Village may pass and enforce all necessary police ordinances, 65 ILCS 5/11-1-1; make all necessary or expedient regulations for the promotion of health, 65 ILCS 5/11-20-5; and define, prevent, and abate nuisances, 65 ILCS 5/11-60-2; and

**WHEREAS**, the Village declares the unauthorized use of cannabis to be a public nuisance, and desires to adopt this Ordinance to regulate cannabis in accordance with state law; and

**WHEREAS**, the Village President and Board of Trustees find that amending the Gilberts Village Code in accordance with this Ordinance will promote the public health, safety, and welfare;

**NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES** of the Village of Gilberts, Kane County, Illinois as follows:

**SECTION 1. RECITALS** The recitals set forth above are incorporated into Section 1 as set forth herein.

**SECTION 2. AMENDMENT TO SECTION 5-3-6 OF THE VILLAGE CODE.** Section 5-3-6 “Possession of cannabis less than ten grams” of Chapter 3 “Miscellaneous Offense” of Title 5 “Police and Public Safety” of the Gilberts Village Code shall be replaced in

its entirety as follows:

“5-3-6. - Possession and use of cannabis

(A) Personal Use of Cannabis.

- (1) Beginning January 1, 2020, except as otherwise provided in the Cannabis Regulation and Tax Act (the “Act”) or the Compassionate Use of Medical Cannabis Program Act, the following acts are prohibited in the Village:
  - (a) possession, consumption, use, purchase, obtaining, or transporting cannabis paraphernalia or an amount of cannabis for personal use that exceeds the possession limit under Section 10-10 of the Act or otherwise not in accordance with the requirements of the Act;
  - (b) cultivation of cannabis for personal use not in accordance with the requirements of the Act; and
  - (c) controlling property if actions that are authorized by the Act occur on the property not in accordance with the Act.
- (2) Except as otherwise provided in the Act or the Compassionate Use of Medical Cannabis Program Act, it is unlawful for any person knowingly to possess cannabis.
- (3) Except as otherwise provided in the Act or the Compassionate Use of Medical Cannabis Program Act, it is unlawful for any person knowingly to manufacture, deliver, or possess with intent to deliver, or manufacture, cannabis.

(B) Personal Use of Cannabis; Restrictions on Cultivation; Penalties.

- (1) Any person other than a registered qualifying patient under the Compassionate Use of Medical Cannabis Program Act who cultivates cannabis plants is liable for penalties provided by this ordinance.
- (2) Any registered qualifying patient under the Compassionate Use of Medical Cannabis Program Act who:
  - (a) cultivates cannabis plants in violation of Section 10-5 of the Act;
  - (b) cultivates more than the allowable number of cannabis plants; or

- (c) sells or gives away cannabis plants, cannabis, or cannabis-infused products produced under Section 10-5 of the Act, is liable for penalties as provided by this ordinance.

(C) Persons Under 21 Years of Age.

- (1) The transfer of cannabis, with or without remuneration, to a person under 21 years of age, or allowing a person under 21 years of age to purchase, possess, use, process, transport, grow, or consume cannabis except where authorized by the Compassionate Use of Medical Cannabis Program Act or by the Community College Cannabis Vocational Pilot Program is prohibited.
- (2) It is unlawful for any person under 21 years of age knowingly to possess cannabis paraphernalia or cannabis, except under provisions of law authorizing the possession of medical cannabis.
- (3) It is unlawful for any parent or guardian to knowingly permit his or her residence, any other private property under his or her control, or any vehicle, conveyance, or watercraft under his or her control to be used by an invitee of the parent's child or the guardian's ward, if the invitee is under the age of 21, in a manner that constitutes a violation of this Section. A parent or guardian is deemed to have knowingly permitted his or her residence, any other private property under his or her control, or any vehicle, conveyance, or watercraft under his or her control to be used in violation of this Section if he or she knowingly authorizes or permits consumption of cannabis by underage invitees. In this subsection, where the residence or other property has an owner and a tenant or lessee, the trier of fact may infer that the residence or other property is occupied only by the tenant or lessee.

(D) Prohibited Conduct.

- (1) No person may engage in the following conduct:
  - (a) possessing cannabis:
    - i. in a school bus, unless permitted for a qualifying patient or caregiver pursuant to the Compassionate Use of Medical Cannabis Program Act;
    - ii. 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;

- iii. 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; or
- iv. in a private residence that is used at any time to provide licensed child care or other similar social service care on the premises;

(b) using cannabis:

- i. in a school bus, unless permitted for a qualifying patient or caregiver pursuant to the Compassionate Use of Medical Cannabis Program Act;
- ii. 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;
- iii. in any motor vehicle;
- iv. in a private residence that is used at any time to provide licensed child care or other similar social service care on the premises;
- v. in any public place; as used in this Section, "public place" means any place where a person could reasonably be expected to be observed by others; "public place" includes all parts of buildings owned in whole or in part, or leased, by the State or a unit of local government, "public place" includes all areas in a park, recreation area, wildlife area, or playground owned in whole or in part, leased, or managed by the State or unit of local government; "public place" does not include a private residence unless the private residence is used to provide licensed child care, foster care, or other similar social service care on the premises; or
- vi. 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;

(c) smoking cannabis in any place where smoking is prohibited under the Smoke Free Illinois Act;

- (d) operating, navigating, or being in actual physical control of any motor vehicle, aircraft, watercraft, or snowmobile while using or under the influence of cannabis in violation of Section 11-501 or 11-502.1 of the Illinois Vehicle Code, Section 5-16 of the Boat Registration and Safety Act, or Section 5-7 of the Snowmobile Registration and Safety Act or motorboat while using or under the influence of cannabis in violation of Section 11-501 or 11-502.1 of the Illinois Vehicle Code;
  - (e) facilitating the use of cannabis by any person who is not allowed to use cannabis under this Act or the Compassionate Use of Medical Cannabis Pilot Program Act;
  - (f) transferring cannabis to any person contrary to the Act or the Compassionate Use of Medical Cannabis Program Act;
  - (g) the use of cannabis by a law enforcement officer, corrections officer, probation officer, or firefighter while on duty; or
  - (h) the use of cannabis by a person who has a school bus permit or a Commercial Driver's License while on duty.
- (E) Preemption.
- (1) This Section should not be construed to regulate or license the activities described in the Act except as otherwise provided in the Act.
  - (2) This Section should not be construed to regulate the activities described in paragraphs (1), (2), or (3) of section 55-25 of the Cannabis Regulation and Tax Act in a manner more restrictive than the regulation of those activities by the State under the Act.
  - (3) In the event of a conflict between this Section, and the Act and its administrative rules, the Act and its rules will prevail.
- (F) Any person who violates any provision of this section is subject to a fine in an amount not less than \$250.00 and not more than \$500.00.”

**SECTION 3. AMENDMENT TO SECTION 5-3-7 OF THE VILLAGE CODE.**

Section 5-3-7 “Possession of drug paraphernalia” of Chapter 3 “Miscellaneous Offense” of Title 5 “Police and Public Safety” of the Gilberts Village Code shall be replaced in its entirety as follows:

“5-3-7. – Drug Paraphernalia

- A. A person who knowingly possesses 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 in preparing a controlled substance for that use, is guilty of a violation of this section. This subsection (a) does not apply to a person who is legally authorized to possess hypodermic syringes or needles under the Hypodermic Syringes and Needles Act.
- B. Any person who keeps for sale, offers for sale, sells, or delivers for any commercial consideration an item of drug paraphernalia, is guilty of a violation of this section.
- C. In determining intent under subsection A of this section, the trier of fact may take into consideration the proximity of the controlled substances to drug paraphernalia or the presence of a controlled substance on the drug paraphernalia.
- D. For the purpose of this section, the definitions and exemptions in the Drug Paraphernalia Control Act, as amended, 720 ILCS 600/2 and 600/4, shall apply unless the context clearly indicates or requires a different meaning. "Drug paraphernalia" does not include "cannabis paraphernalia" as defined in Section 1-10 of the Cannabis Regulation and Tax Act, as amended.
- E. Any person who violates this section is subject to a fine in an amount not less than \$250.00 and not more than \$500.00."

**SECTION 4. SEVERABILITY.** In the event that any section, clause, provision, or part of this Ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect. If any part of this Ordinance is found to be invalid in any one or more of its several applications, all valid applications shall remain in effect.

**SECTION 5. REPEAL AND SAVINGS CLAUSE.** All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however that nothing in this Ordinance shall affect any rights, actions, or causes of action which shall have accrued to the Village of Gilberts prior to the effective date of this Ordinance.

**SECTION 6. EFFECTIVE DATE.** This Ordinance shall only be effective upon the passage, approval, and publication in the manner required by law.

ADOPTED THIS 21 DAY OF January, 2020, pursuant to roll call vote as follows:

	Ayes	Nays	Absent	Abstain
Trustee Dan Corbett	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Elissa Kojzarek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Trustee Nancy Farrell  
Trustee Jeanne Allen  
Trustee Lou Hacker  
Trustee Guy Zambetti  
President Rick Zirk

<u>✓</u>	_____	_____	_____
<u>✓</u>	_____	_____	_____
_____	_____	<u>✓</u>	_____
<u>✓</u>	_____	_____	_____
_____	_____	_____	_____

APPROVED THIS 21 DAY OF Jan., 2020

*Rick Zirk*  
Village President, Rick Zirk

*Courtney Baker*  
Village Clerk, Courtney Baker

Published: 1-22-20

