

COUNTY OF KANE

**DEVELOPMENT & COMMUNITY
SERVICES DEPARTMENT**
Mark D. VanKerkhoff, AIA, Director
Building Officer
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MEMO

Date: February 25, 2021

To: Kane County Zoning Board of Appeals

From: Mark VanKerkhoff, AIA, Director, Zoning Enforcing Officer

Re: Draft Text Amendments to the Kane County Zoning Ordinance
Allowing Adult-Use Cannabis Business Establishments in the
unincorporated areas of Kane County

Background

- **State Law allowing Adult-Use Cannabis Business Establishments was effective on January 1, 2020.** This law permits possession and consumption of certain amounts of cannabis and regulates the licensing and operations of adult use cannabis businesses.
- **Local Governments were given the option to pass ordinances prohibiting the establishments of certain cannabis businesses in their jurisdiction.**
- **The Kane County Board adopted Ordinance to “Opt Out” and thereby prohibit Adult-use Cannabis Business Establishments in the unincorporated areas of Kane County on November 12, 2019**
- **The Kane County Board is considering an Ordinance to “Opt In” by rescinding the Ordinance to “Opt Out” passed on November 12, 2019, thereby allowing Adult-use Cannabis Business Establishments in the unincorporated areas of Kane County.**
- **Local Governments must prohibit or allow all or none of the adult use cannabis business types.**
- **Local Governments may enact reasonable zoning restrictions pertaining to licensed cultivation centers, craft growers, processing organizations, and dispensaries.**

- **New definitions and regulations adopted in PA 101-0593**
 1. A unit of local government, may authorize or permit the on-premises consumption of cannabis at or in a dispensing organization or retail tobacco store (as defined in Section 10 of the Smoke Free Illinois Act) on-premises consumption of cannabis at or in a cannabis business establishment within its jurisdiction in a manner consistent with this Act. A cannabis business establishment or other entity authorized or permitted by a unit of local government to allow on-site consumption shall not be deemed a public place within the meaning of the Smoke Free Illinois Act.
 2. The definition regarding advertising adult use cannabis businesses was amended.

The following are possible approaches to adopting Zoning Regulations providing for Adult Use Cannabis Businesses in the unincorporated areas of Kane County. **Bolded text summarizes how the draft text amendments addresses each approach.**

- Add definitions for adult –use cannabis businesses and advertising as adopted by the State. **Definitions included in the draft text amendments.**
- Amend other definitions, as appropriate, to keep adult-use cannabis businesses distinguished from other defined agricultural, processing and retail land uses. **Appropriate definitions amended in the draft text amendments.**
- Add the various types of adult-use cannabis businesses as “Special Uses” in the appropriate zoning districts. **Appropriate section of the zoning ordinance amended per the below chart.**

Adult-Use Cannabis Businesses Proposed as Special Uses

Type of Business	Farming F	Agricultural Business F2	Business RB, B1, B3, B4	Industrial LI, I
Craft Growers	X	X		X
Cultivation Centers	X	X		X
Dispensers			X	
Infusers		X		X
Processors		X		X
Transporters		X*		X*

* if in combination with another permitted adult-use cannabis business

- Include State adopted setbacks from the property line of a pre-existing public or private preschool, elementary school, or secondary school, and other sensitive land uses being considered by other local governments. **Appropriate section of the zoning ordinance amended per the below chart.**

Proposed Adult-Use Cannabis Businesses Setbacks from other uses

Type of Business	1	2	3
Craft Growers	1000'	1000'	1000'
Cultivation Centers	2500'	2500'	2500'
Dispensers	1000'	250'	1000'
Infusers	1500'	250'	1500'
Processors	1500'	250'	1500'
Transporters	1500'	250'	1500'

1. Facility may not be located within (_____) of the property line of a pre-existing public or private nursery school, preschool, primary or secondary school, day care center, day care home or residential care home.
2. Facility may not be located in a dwelling unit or within (_____) of the property line of a pre-existing property zoned or used for residential purposes.
3. Facility may not be located within (_____) of the property line of a pre-existing forest preserve, public park, or place of worship.

Setbacks adopted by other Counties for Reference:

	Distance from schools (ft)			Distance from Residential (ft)			Distance from Gathering Places (ft)			
	DeKalb	Kendall	McHenry	DeKalb	Kendall	McHenry	DeKalb	Kendall	McHenry	
Craft Grower	1,500	1,000	2,500	1,500	1,000	-	1,500	1,000	-	Craft Grower
Cultivator	1,500	2,500	2,500	1,500	2,500	2,500	1,500	2,500	-	Cultivator
Dispensary	-	1,000	1,000	-	250	-	-	1,000	-	Dispensary
Infuser	1,500	1,500	-	250	250	-	1,500	1,500	-	Infuser
Processor	1,500	1,500	-	250	250	-	1,500	1,500	-	Processor
Transport	1,500	1,500	-	250	250	-	1,500	1,500	-	Transport
	Does not include universities, colleges, vocational centers and			Distance is from areas zoned residential			Refers to Forest Preserves, Churches, Parks, Libraries, Arcades that allow <21 year-			

- Consider adding hours of operation to mirror State Statues. **The proposed text amendments limit business hours for dispensaries to between 6 a.m. and 10 p.m.**
- Consider limiting the number of Adult-use Cannabis Dispenser Establishments. **The text amendments could include that there shall be no more than (1) Dispensers.**

**Allowing Adult-Use Cannabis Business Establishments in the
unincorporated areas of Kane County
Draft Text Amendments
To Chapter 25: Zoning**

ARTICLE III. RULES AND DEFINITIONS

Section 3.1. Established.

ADULT-USE CANNABIS ADVERTISING: No adult-use cannabis business establishment shall place or maintain, or cause to be placed or maintained, an advertisement, of cannabis or a cannabis-infused product in any form or through any medium:

- a. *Within 1,000 feet of the perimeter of a school grounds, playground, hospital, healthcare facility, recreation center or facility, child care center, public park or public library, or any arcade to which admission is not restricted to person's age 21 years or older*
- b. *On or in a public transit vehicle or public transit shelter*
- c. *On or in a publicly owned or public operated property*
- d. *Which contains information that is false or misleading, promotes excessive consumption, depicts a person under 21 years of age consuming cannabis, or includes the image of a cannabis leaf*
- e. *Includes any image designed or likely to appeal to minors, including cartoons, toys, animals, or children, or any other likeness to images, characters, or phrases that are popularly used to advertise to children, or any imitation of candy packaging or labeling, or that promotes the consumption of cannabis*
- f. *These restrictions do not apply to noncommercial messages.*

ADVERTISE AS DEFINED FOR ADULT USE CANNABIS ADVERTISING: Means to engage in promotional activities including, but not limited to: newspaper, radio, Internet and electronic media, and television advertising; the distribution of fliers and circulars; billboard advertising; and the display of window and interior signs. "Advertise" does not mean exterior signage displaying only the name of the licensed cannabis business establishment.

ADULT-USE CANNABIS BUSINESS ESTABLISHMENT: A cultivation center, craft grower, processing organization, infuser organization, dispensing organization or transporting organization. All adult-use cannabis businesses shall comply with all state rules and regulations and have the appropriate state licenses. . In addition, all adult-use cannabis businesses shall comply with Adult Cannabis Business Establishments Setbacks, as defined herein. Cannabis Business Establishments Prohibited. The following Adult Use Cannabis Business Establishments are prohibited in the County of Kane. No person shall locate, operate, own, suffer, allow to be operated or aid, abet or assist in the operation within the County of Kane any of the following:

- ~~*—Adult-Use Cannabis Craft Grower*~~
- ~~*—Adult-Use Cannabis Cultivation Center*~~
- ~~*—Adult-Use Cannabis Dispensing Organization*~~
- ~~*—Adult-Use Cannabis Infuser Organization or Infuser*~~
- ~~*—Adult-Use Cannabis Processing Organization or Processor*~~
- ~~*—Adult-Use Cannabis Transporting Organization or Transporter*~~

ADULT-USE CANNABIS BUSINESS ESTABLISHMENTS SETBACKS: All adult-use cannabis businesses shall comply with the following setbacks from other uses:

Type of Business	1	2	3
Craft Growers	1000'	1000'	1000'
Cultivation Centers	2500'	2500'	2500'
Dispensers	1000'	250'	1000'
Infusers	1500'	250'	1500'
Processors	1500'	250'	1500'
Transporters	1500'	250'	1500'

1. Facility may not be located within (_____) of the property line of a pre-existing public or private nursery school, preschool, primary or secondary school, or day care center.
2. Facility may not be located in a dwelling unit or within (_____) of the property line of a pre-existing property zoned or used for residential purposes.
3. Facility may not be located within (_____) of the property line of a pre-existing forest preserve, public park, or place of worship.

ADULT-USE CANNABIS CRAFT GROWER: A facility operated by an organization or business that is licensed by the Illinois Department of Agriculture to cultivate, dry, cure and package cannabis and perform other necessary activities to make cannabis available for sale at a dispensing organization or use at a processing organization, per the Cannabis Regulation and Tax Act, (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder. All cultivation and processing of cannabis shall take place in an enclosed locked facility.

ADULT-USE CANNABIS CULTIVATION CENTER: A facility operated by an organization or business that is licensed by the Illinois Department of Agriculture to cultivate, process, transport and perform necessary activities to provide cannabis and cannabis-infused products to licensed cannabis business establishments, per the Cannabis Regulation and Tax Act, (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder. All cultivation of cannabis shall take place in an enclosed locked facility.

ADULT-USE CANNABIS DISPENSING ORGANIZATION OR DISPENSER: A facility operated by an organization or business that is licensed by the Illinois Department of Financial and Professional Regulation to acquire cannabis from licensed cannabis business establishments for the purpose of selling or dispensing cannabis, cannabis-infused products, cannabis seeds, paraphernalia or related supplies to purchasers or to qualified registered medical cannabis patients and caregivers, per the Cannabis Regulation and Tax Act, (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder. In addition, all adult-use cannabis dispensers shall only operate between the hours of 6:00 AM and 10:00 pm. There shall be no more than one (1) Dispenser approved in the unincorporated areas of Kane County.

ADULT-USE CANNABIS INFUSER ORGANIZATION OR INFUSER: A facility operated by an organization or business that is licensed by the Illinois Department of Agriculture to directly incorporate cannabis or cannabis concentrate into a product formulation to produce a cannabis-infused product, per the Cannabis Regulation and Tax Act, (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

ADULT-USE CANNABIS PROCESSING ORGANIZATION OR PROCESSOR: A facility operated by an organization or business that is licensed by the Illinois Department of Agriculture to either extract constituent chemicals or compounds to produce cannabis concentrate or incorporate cannabis or cannabis concentrate into a product formulation to produce a cannabis product, per the Cannabis Regulation and Tax Act, (P.A.101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

ADULT-USE CANNABIS TRANSPORTING ORGANIZATION OR TRANSPORTER: An organization or business that is licensed by the Illinois Department of Agriculture to transport cannabis on behalf of a cannabis business establishment or a community college licensed under the Community College Cannabis Vocational Training Pilot Program, per the Cannabis Regulation and Tax Act, (P.A.101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

AGRICULTURAL ACTIVITIES: Means and includes planting, raising or harvesting of any agricultural or horticultural commodities, including the related handling, packing and processing upon the farm where produced or at the point of first processing. This shall not include the cultivation of cannabis as defined by the Illinois Cannabis Regulation and Tax Act (P.A.101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

AGRICULTURE: Land, including buildings and structures accessory thereto, used for agricultural purposes; provided, the principal use involves the production, cultivation, or growing of soil crops and the raising of livestock (including poultry, bees, fish, horses, etc.), the lot contains not less than five (5) acres of land area, and only byproducts thereof may be sold from the lot. Buildings or structures used, or to be used, for agricultural purposes shall be required to conform to building setback lines. This shall not include buildings used primarily for residences. This shall not include the cultivation, processing, infusing, dispensing or transporting of cannabis as defined by the Illinois Cannabis Regulation and Tax Act (P.A.101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

CANNABIS: Marijuana, hashish, and other substances that are identified as including any parts of the plant cannabis sativa and including derivatives or subspecies, such as indica, of all strains of cannabis, whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin, including tetrahydrocannabinol (THC) of greater than 0.3% on a dry weight basis and all other naturally produced cannabinol derivatives, whether produced directly or indirectly by extraction, in accordance with the Illinois Cannabis Regulation and Tax Act. Cannabis includes cannabis concentrate and cannabis-infused products. Cannabis shall not include industrial hemp as defined and authorized under the Industrial Hemp Act.

HEALTH AND RECREATION CLUB OR ASSOCIATION: An organization engaged in the business of providing for its members, services and facilities related to encouraging and promoting the health and well being of its members, by providing recreational facilities of swimming pool, tennis courts, handball and racquetball courts, and weight control facilities of sauna and steam baths, weightlifting equipment, exercise equipment, whirlpool and massage, and such other services and facilities consistent with and directly related to fostering the health and well being of its members. This shall not include the cultivation, processing, infusing, dispensing or transporting of cannabis as defined by the Illinois Cannabis Regulation and Tax Act (P.A.101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

NIGHTCLUB: An establishment serving food and/or liquor and providing music and space for dancing by patrons only. A nightclub shall not include an "adult business". This shall not include the cultivation, processing, infusing, dispensing or transporting of cannabis as defined by the Illinois Cannabis Regulation and Tax Act (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

ROADSIDE STAND: A structure for the display and sale of agricultural products, with no space for customers within the structure itself. This shall not include the cultivation, processing, infusing, dispensing or transporting of cannabis as defined by the Illinois Cannabis Regulation and Tax Act (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

~~*Use, interim for dispensing of controlled substances licensed by the State of Illinois: An interim use that may be granted on zoning lots in the RB, B-1, and B-3 specifically for the dispensing of controlled substances licensed by the State of Illinois. An "interim special use" may be granted for only a limited period of time, not to exceed (5) years.*~~

ARTICLE VIII. FARMING DISTRICT

Sec. 8.1. F District – Farming

Sec. 8.1-1 Permitted Uses.

G. Produce stand (1 portable) for the display and sale of only products which are produced on the premises, provided:

- 1. That such stand shall comply with the setback requirements.*
- 2. That adequate parking space be provided for the motor vehicles of customers off the highway right-of-way. (See article XIV, "Off Street Parking", of this chapter.)*
- 3. That the lot from which the sale products are produced and sold shall contain not less than five (5) acres of land area.*
- 4. This shall not include the cultivation, processing, infusing, dispensing or transporting of cannabis as defined by the Illinois Cannabis Regulation and Tax Act (P.A. 101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.*

Sec. 8.1-2. Special Uses.

gg. Produce stand (1) for the display and sale of a minimum of five (5) products which are produced on the premises, plus a maximum of ten (10) farm produce products, not grown on the site and not including any processed items of any kind, subject to the following restrictions:

- 1. A temporary use permit upon proper application by such owner or operator is issued by the Zoning Enforcing Officer.*
- 2. Such permit shall not be valid for more than six (6) months (May 1 to November 1) out of each calendar year and a new permit shall be obtained each year during which the granted special use is in effect.*
- 3. Such permit shall require compliance with subsection 25-8-1-1G of section 25-8-1.*

4. Such permit shall not allow the serving or consumption of food on said premises.
5. At the time the temporary use permit is applied for, the applicant shall submit a plot plan and sketch portraying an open air structure, in detail, showing the construction of said structure for approval for the display and retail sale of the farm products.
6. The application for such permit shall list the types of produce to be sold, or offered for sale, which are grown or are to be grown on said parcel and shall also list the types of produce proposed to be imported for sale.
7. Such special use, when granted, shall apply only to the original applicant.
8. Where all produce sold or offered for sale is produced on the immediate premises, see subsection 25-8-1-1G of this section 25-8-1.
9. This shall not include the cultivation, processing, infusing, dispensing or transporting of cannabis as defined by the Illinois Cannabis Regulation and Tax Act (P.A.101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

JJ. Adult-use cannabis craft growers and cultivation centers.

Sec. 8.3. F2 District - Agricultural related sales, service, processing, research, ware house and marketing: Special uses.

The purpose and intent of this district is to provide for the proper location and regulation of agriculturally related sales, services, processing, research, warehousing and marketing activities and other related uses that are dependent upon, or closely allied to, the agricultural industry.

Any use established in the F2 District hereafter shall be operated in such a manner as to comply with the applicable performance standards as set forth in Article XI, Section 11.1-5 of this ordinance.

8.3-1 Permitted Uses.

All uses in this district are special uses and must be approved in accordance with procedures and requirements of Section 4.8, Special Uses, of this ordinance.

8.3-2 Special Uses.

The following special uses may be allowed in the F2 District:

j. Adult-use cannabis craft growers, cultivation centers, infusers, and processors.

k. Adult –use cannabis transporters, if in combination with a craft grower, cultivation center, infuser and/or processor.

ARTICLE X. BUSINESS DISTRICTS

Sec. 10.1. RB District – Restricted Business

Sec. 10.1-1 Permitted Uses

F. Prescription drugstores (not including serving of any food or beverages). This shall not include the dispensing of cannabis as defined by the Illinois Cannabis Regulation and Tax Act (P.A.101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

G. Retail sale of foods, drugs, wearing apparel, hardware, furniture, household goods and supplies, office equipment and supplies, camping and recreational equipment (not self-propelled), garden supplies and other similar products, goods and merchandise are permitted so long as the aforesaid goods and/or merchandise is sold from a permanent structure. Temporary seasonal sales may be permitted for a period not to exceed six (6) months without erecting a structure providing a temporary use permit is obtained from the zoning enforcing officer. In the case of temporary food sales, a temporary food service license must be obtained from the Kane County environmental health department. This shall not include the dispensing of cannabis as defined by the Illinois Cannabis Regulation and Tax Act (P.A.101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

Sec. 10.1-2. Special Uses.

a. Adult-use cannabis dispensers

Sec. 10.2. B1 District – Business

Sec. 10.2-1. Permitted Uses

S. Retail sale of foods, drugs, wearing apparel, hardware, furniture, household goods and supplies, office equipment and supplies, camping and recreational equipment (not self-propelled), garden supplies and other similar products, goods and merchandise is permitted so long as the aforesaid goods and/or merchandise is sold from a permanent structure. Temporary seasonal sales may be permitted for a period not to exceed six (6) months without erecting a structure providing a temporary use permit is obtained from the zoning enforcing officer. In the case of temporary food sales, a temporary food service license must be obtained from the Kane County environmental health department. This shall not include the dispensing of cannabis as defined by the Illinois Cannabis Regulation and Tax Act (P.A.101-0027), as it may be amended from time-to-time, and regulations promulgated thereunder.

Sec. 10.2-2. Special Uses.

g. Adult-use cannabis dispensers

Sec. 10.4. B3 District – Business

Sec. 10.4-2. Special Uses.

p. Adult-use cannabis dispensers

Sec. 10.5. B4 District – Business

Sec. 10.5-2. Special Uses.

b. Adult-use cannabis dispensers

Sec. 11.1. LI District – Light Industry

Sec. 11.1-2. *Special Uses.*

Because permitted uses in the LI District are determined by compliance with applicable performance standards, there shall be not special uses except for as follows:

- a. Adult-use cannabis craft growers, cultivation centers, infusers, and processors.*
- b. Adult –use cannabis transporters, if in combination with a craft grower, cultivation center, infuser and/or processor.*

Sec. 11.2. I District – Industry

Sec. 11.2-1 Permitted Uses

In the I District any use is permitted except the following:

- m. Adult-use cannabis business establishments*

Sec. 11.2-2. *Special Uses.*

The following special uses may be allowed in the I District subject to the provisions of Section 4.8 of this ordinance:

- a. Adult-use cannabis craft growers, cultivation centers, infusers, and processors.*
- b. Adult –use cannabis transporters, if in combination with a craft grower, cultivation center, infuser and/or processor.*