
ORDINANCE NO. 19-20-39

An Ordinance Amending Section 43.24, Drug Paraphernalia, and Section 43.25, Unlawful Possession of Cannabis, of Chapter 43, Offenses Against Public Peace, Safety and Morals, of the Johnsburg Municipal Code

AN ORDINANCE PASSED BY THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF JOHNSBURG

AT A REGULAR MEETING ON DECEMBER 10, 2019

PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF JOHNSBURG

President

Edwin P. Hettermann

Board of Trustees

Tom Curry
Beth Foreman
Kyle Frost
Josh Hagen
Greg Klemstein
Kevin McEvoy

Village Administrator

Claudett E. Peters

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WHEREAS, the Village of Johnsburg has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs that protect the health, safety and welfare of the citizens; and

WHEREAS, the State of Illinois enacted the Cannabis Regulation and Tax Act (the "Act"), which pertains to the possession, use, cultivation, transportation and dispensing of adult-use cannabis, which became effective June 25, 2019; and

WHEREAS, pursuant to the Act, the Village of Johnsburg may enact reasonable ordinances not in conflict with the Act; and

WHEREAS, the Village desires to prohibit the use of cannabis in public.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Johnsburg, McHenry County, Illinois, as follows:

SECTION 1: Section 43.24, Drug Paraphernalia, of Chapter 43, Offenses Against Public Peace, Safety and Morals, of the Johnsburg Municipal Code shall be amended by deleting the stricken through language as follows:

43.24 DRUG PARAPHERNALIA

A. **DEFINITIONS:** For the purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

~~Cannabis. As defined in 720 ILCS 550/3, as amended.~~

Cocaine Spoon. A spoon with a bowl so small that the primary use for which it is reasonably adapted or designed is to hold or administer cocaine, and which is so small as to be unsuited for the typical, lawful uses of a spoon. A cocaine spoon may or may not be merchandised on a chain and may or may not be labeled as a "cocaine" spoon or "coke" spoon.

Control Substance. Any drug, substance, or immediate precursor enumerated in 720 ILCS 570/203 and 204, 205 and 206, 207, 207 and 208, 209 and 210, 211 and 212 (Scheds. 1-5) as amended (commonly known as the Controlled Substances Act).

Drug Paraphernalia. All equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing,

testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance as defined in 720 ILCS 570/203 and 204, 205 and 206, 207, 207 and 208, 209 and 210, 211 and 212 (Scheds. 1-5) as amended, or cannabis as defined in 720 ILCS 550/3 *et seq.*, as amended.

1. It includes, but is not limited to:
 - a. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance ~~or cannabis~~ or from which a controlled substance ~~or cannabis~~ can be derived;
 - b. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substance ~~or cannabis~~;
 - c. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance ~~or cannabis~~;
 - d. Testing equipment used, intended for use or designed for use in identifying, or in analyzing the strength effectiveness or purity of controlled substances ~~or cannabis~~;
 - e. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances ~~or cannabis~~;
 - f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances ~~or cannabis~~;
 - ~~g. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;~~
 - ~~h.g.~~ Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in packaging small quantities of controlled substances ~~or cannabis~~;
 - ~~i.h.~~ Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances ~~or cannabis~~;
 - ~~j.i.~~ Containers and other objects used, intended for use or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, ~~or hashish oil~~ into the human body, such as:

- ~~(1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;~~
- ~~(2) Water pipes;~~
- ~~(3) Carburetion tubes and devices;~~
- ~~(4) Smoking and carburetion masks;~~
- ~~(5) Roach clips, which are objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;~~
- ~~(6) Carburetion pipes;~~
- ~~(7) Electric pipes;~~
- ~~(8) Air-driven pipes;~~
- ~~(9) Chillums;~~
- ~~(10) Bongs; and~~
- ~~(11) Ice pipes or chillers.~~

2. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:
 - a. Statements by an owner or by anyone in control of the object concerning its use;
 - b. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substances;
 - c. The proximity of the object, in time and space, to a direct violation of this subchapter;
 - d. The proximity of the object to controlled substances;
 - e. The existence of any residue of controlled substances on the object;
 - f. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows intend to use the object to facilitate a violation of this subchapter. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this subchapter

shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

- g. Instructions, oral or written, provided with the object concerning its use;
- h. Descriptive materials accompanying the object which explain or depict its use;
- i. National and local advertising concerning its use;
- j. The manner in which the object is displayed for sale;
- k. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- l. The existence and scope of legitimate uses for the object in the community; and
- m. Expert testimony concerning its use.

~~“MARIJUANA PIPE” OR “HASHISH PIPE”. A pipe characterized by a bowl which is so small that the primary use for which it is reasonably adapted or designed is the smoking of marijuana or hashish, rather than lawful smoking tobacco and which may or may not be equipped with a screen.~~

B. PROHIBITIONS.

1. It shall be unlawful for any person to sell, offer for sale, display, possess, furnish, supply or give away any cocaine spoon, ~~marijuana pipe, hashish pipe~~ or any drug paraphernalia except as permitted in the Cannabis Regulation and Tax Act and the Compassionate Use of Medical Cannabis Program Act.
2. The prohibition contained in this section shall not apply to manufacturers, wholesalers, jobbers, licensed medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, osteopathic physicians, dentists, chiropractors, veterinarians, pharmacists, or embalmers in the normal lawful course of their respective businesses or professions, nor to public officers or employees which engaged in the performance of their official duties, nor to persons suffering from diabetes, asthma, or any other medical condition requiring self-injection.
3. Construction; Severability. It is the legislative intent that all provisions and section, clauses and sentences of the Ordinance be liberally construed, and should any provision, section, clause or sentence be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions, sections, clauses, or sentences, it being the intent that this Ordinance shall stand notwithstanding the validity of any provision, section, clause or sentence.

4. Settlement of Offense: Any offense arising under this Section 43.24, may be settled and compromised by the offender by payment to the Village the sum of money stated for a Class D violation in Chapter 1.07-E.

SECTION 2: Section 43.25, Unlawful Possession of Cannabis, of Chapter 43, Offenses Against Public Peace, Safety and Morals, of the Johnsburg Municipal Code shall be deleted in its entirety and replaced with the following as follows:

43.25 POSSESSION OF CANNABIS

- A. DEFINITIONS: For purposes of this Section, cannabis is defined as in 720 ILCS 550/3(a), as amended.
- B. POSSESSION PROHIBITED: It shall be unlawful for any person who is under the age of 21 to possess any substance containing cannabis within the corporate limits of the Village. Further, it shall be unlawful for any person to possess any substance containing cannabis within the corporate limits of the Village in the following circumstances:
 1. in a school bus, unless permitted for a qualifying patient or caregiver pursuant to the Compassionate Use of Medical Cannabis Pilot Program Act;
 2. 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 Pilot Program Act;
 3. in any correctional facility;
 4. 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;
 5. in a private residence that is used at any time to provide licensed child care or other similar social service care on the premises;
 6. in any part of a building owned in whole or in part, or leased, by the Village; or
 7. in any other manner prohibited by state statutes, as they may be amended from time to time.
- C. POSSESSION LIMITED:
 1. Other than as set forth in Section 43.25-B, it shall be unlawful for any person who is 21 years of age or older and a resident of the State of Illinois to cumulatively possess within the corporate limits of the Village:
 - (i) more than 30 grams of cannabis flower;
 - (ii) more than 500 milligrams of THC contained in a cannabis-infused product;
 - or,
 - (iii) more than 5 grams of cannabis concentrate.

Notwithstanding the foregoing, it shall not be unlawful for registered qualifying patients under the Compassionate Use of Medical Cannabis Pilot Program Act (410

ILCS 130/1 *et seq.*) to possess more than 30 grams of any cannabis produced by cannabis plants grown under 10-5(b) of the Cannabis Regulation and Tax Act, provided any amount of cannabis produced in excess of 30 grams of raw cannabis or its equivalent must remain secured within the residence or residential property in which it was grown.

2. Other than as set forth in Section 43.25-B, it shall be unlawful for any person who is 21 years of age or older and not a resident of the State of Illinois to cumulatively possess within the corporate limits of the Village:

- (i) more than 15 grams of cannabis flower;
- (ii) more than 250 milligrams of THC contained in a cannabis-infused product;
- or,
- (iii) more than 2.5 grams of cannabis concentrate.

D. **CULTIVATION PROHIBITED:** It shall be unlawful for i) any person who is under the age of 21, or ii) any person who is 21 years of age or older and not a registered qualifying patient under the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/1 *et seq.*), to cultivate cannabis plants within the corporate limits of the Village. Further, it shall be unlawful for any person to cultivate cannabis plants within the corporate limits of the Village in any other manner prohibited by state statutes, as they may be amended from time to time.

E. **CULTIVATION LIMITED:** It shall be unlawful for any person who is 21 years of age or older and a registered qualifying patient under the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/1 *et seq.*) to cultivate cannabis plants within the corporate limits of the Village:

- 1. unless the person has been a resident of the State of Illinois for more than 30 days before cultivation;
- 2. in excess of 5 plants that are more than 5 inches tall per household without a cultivation center or craft grower license;
- 3. outside of an enclosed, locked space;
- 4. using cannabis seeds purchased from somewhere other than a dispensary for the purpose of home cultivation and seeds may not be given or sold to any other person;
- 5. in a location where they are subject to ordinary public view (within the sight line with normal visual range of a person, unassisted by visual aids, from a public street or sidewalk adjacent to real property, or from within an adjacent property);
- 6. without reasonable precautions to ensure the cannabis plants are secure from unauthorized access, including unauthorized access by a person under 21 years of age;
- 7. on non-residential property and property that is not lawfully in possession of the cultivator or without the consent of the person in lawful possession of the property.
- 8. in a dwelling, residence, apartment, condominium unit, enclosed, locked space, or piece of property which has not been divided into multiple dwelling units and contains in excess of 5 plants at any one time; or,

9. unless residing at the residence where the cannabis plants are located, except that a registered qualifying patient's authorized agent may tend to the cannabis plants if attending to the residence for brief periods, such as when the qualifying patient is temporarily away from the residence.

A registered qualifying patient who cultivates more than the allowable number of cannabis plants, or who sells or gives away cannabis plants, cannabis, or cannabis-infused products produced under this Section, is liable for penalties as provided by law, including the Cannabis Control Act, in addition to loss of home cultivation privileges as established by rule.

- F. **MEDICAL USE OF CANNABIS:** Notwithstanding the foregoing, it shall not be unlawful for any registered qualifying patients to possess cannabis consistent with the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/1 *et seq.*), as amended, the terms of which are incorporated herein.
- G. **PUBLIC USE OF CANNABIS:** It shall be unlawful for any person to use cannabis:
 1. in a school bus, unless permitted for a qualifying patient or caregiver pursuant to the Compassionate Use of Medical Cannabis Pilot Program Act;
 2. 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 Pilot Program Act;
 3. in any correctional facility;
 4. in any motor vehicle;
 5. in a private residence that is used at any time to provide licensed childcare or other similar social service care on the premises;
 6. in any public place or privately owned parking lot or walkway where retail business is conducted (as used in this Section, "public place" means any part of a building or property owned in whole or in part, or leased, by the Village, parks, and sidewalks);
 7. 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 Pilot Program Act.
 8. in any other manner prohibited by state statutes, as they may be amended from time to time.
- H. **PUBLIC DISPLAY OF CANNABIS:** It shall be unlawful for any person to display cannabis in any public place (as used in this Section, "public place" means any part of a building or property owned in whole or in part, or leased, by the Village, parks, and sidewalks).
- I. **VIOLATION; PENALTY:** Whoever violates any provision of this Section 43.25 shall be fined as follows: not less than \$200 and not more than \$300 for a first offense; not less than \$400 and not more than \$600 for a subsequent offense. Each day that a violation continues shall be considered a separate offense.

SECTION 4: If any provision of this Ordinance, or the application of any provision of this Ordinance, is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Ordinance, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Ordinance.

SECTION 5: This Ordinance shall be in full force upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law, provided, however, that the offenses provided for herein shall take effect on the first day of January, 2020.


Aye: Trustees Foreman, Curry, Frost, Hagen and Klemstein

Nay: None

Abstain: None

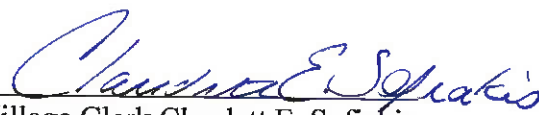
Absent: Trustee McEvoy

APPROVED:



Village President Edwin P. Hettermann

(SEAL)

ATTEST: 
Village Clerk Claudett E. Sofiakis

Passed: December 10, 2019

Approved: December 19, 2019

Published: December 19, 2019

CERTIFICATION

I, CLAUDETT E. SOFIAKIS, do hereby certify that I am the duly appointed, acting and qualified Clerk of the Village of Johnsburg, McHenry County, Illinois, and that as such Clerk, I am the keeper of the records and minutes and proceedings of the President and Board of Trustees of said Village of Johnsburg.

I do further certify that at a regular meeting of the President and Board of Trustees of the Village of Johnsburg, held on the 10th day of December, 2019 the foregoing Ordinance entitled *An Ordinance Amending Section 43.24, Drug Paraphernalia, and Section 43.25, Unlawful Possession of Cannabis, of Chapter 43, Offenses Against Public Peace, Safety and Morals, of the Johnsburg Municipal Code* was duly passed by the President and Board of Trustees of the Village of Johnsburg.

The pamphlet form of Ordinance No. 19-20-39 including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was available in the Village Hall, commencing on the 10th day of December, 2019, and will continue for at least 10 days thereafter. Copies of such Ordinance are also available for public inspection upon request in the office of the Village Clerk.

I do further certify that the original, of which the attached is a true and correct copy, is entrusted to me as the Clerk of said Village for safekeeping, and that I am the lawful custodian and keeper of the same.

Given under my hand and seal of the Village of Johnsburg, this 10th day of December, 2019.



Claudett E. Sofiakis, Village Clerk
Village of Johnsburg,
McHenry County, Illinois

(SEAL)