



**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**

*Planning Division*

**m e m o r a n d u m**

**TO:** Urbana Plan Commission

**FROM:** Kevin Garcia, AICP, Planner II

**DATE:** July 18, 2014

**SUBJECT:** Plan Case 2234-T-14: An amendment to Article II and Article V of the Urbana Zoning Ordinance to add definitions and to establish use provisions for “Medical Cannabis Dispensaries” and “Medical Cannabis Cultivation Facilities”, Urbana Zoning Administrator, applicant.

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**Introduction**

The Zoning Administrator is requesting an amendment to multiple sections of the Zoning Ordinance in order to add definitions and establish use provisions for medical cannabis dispensaries and cultivation centers. The proposed ordinance amendment would add definitions to Article II, add medical cannabis related uses to Table V-1, Table of Uses, and add Section V-13, Regulation of Medical Cannabis Uses, to the Urbana Zoning Ordinance.

The purpose of the proposed amendment is to address deficiencies in the Zoning Ordinance regarding medical cannabis facilities. On January 1, 2014, the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/) (“the Act”) took effect, making Illinois the 20<sup>th</sup> state to legalize cannabis for medical use by qualifying patients. The Act established regulations for cultivation, distribution, and use of medical cannabis, and provides definitions and siting rules for medical cannabis cultivation centers and dispensaries.

Since passage of the Act, the City has been directly contacted by a number of parties that have expressed interest in Urbana as a potential location for medical cannabis cultivation centers and/or dispensaries. Since there are no listings for medical cannabis cultivation centers or dispensaries in Table V-1, Table of Uses, staff has only been able to provide general guidance based on the State’s rules and on the assumption that medical cannabis facilities would be treated like similar uses that are in Table V-1 (e.g. cultivation centers would be treated like drug or chemical manufacturing, dispensaries would be treated like drug stores). This approach is consistent with Section V-1.B of the Zoning Ordinance, which states that “such use shall be subject to the regulations of the use...to which it is most related or similar, as determined by the Zoning Administrator.”

Because there are unique characteristics associated with these uses and they are likely to be sited in Urbana at some point in the future, the Zoning Administrator is requesting a text amendment to establish specific uses and guidelines for such facilities. Through the text amendment, the Zoning Administrator proposes to add regulations to allow medical cannabis cultivation centers and medical cannabis dispensaries as permitted, conditional, or special uses in some business, industrial, and agricultural districts.

The Plan Commission should review the proposed Zoning Ordinance text amendment and make a recommendation for City Council to adopt or deny the proposed changes. The Urbana City Council will make the final decision regarding which districts and under what circumstances medical cannabis cultivation centers and medical cannabis dispensaries should be allowed in the City.

## **Background**

On January 1<sup>st</sup>, 2014, the State of Illinois enacted the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/) (hereafter, “the Act”), making it legal for qualifying patients to obtain medical cannabis to treat their medical conditions. Qualifying patients must be diagnosed by a physician as having one or more of the following *debilitating medical conditions*, and must then apply for and obtain a registration card from the Illinois Department of Public Health before they can begin using medical cannabis.

*“Debilitating Medical Conditions”*: Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, cachexia/wasting syndrome, muscular dystrophy, severe fibromyalgia, spinal cord disease, including but not limited to arachnoiditis, Tarlov cysts, hydromyelia, syringomyelia, Rheumatoid arthritis, fibrous dysplasia, spinal cord injury, traumatic brain injury and post-concussion syndrome, Multiple Sclerosis, Arnold-Chiari malformation and Syringomyelia, Spinocerebellar Ataxia (SCA), Parkinson's, Tourette's, Myoclonus, Dystonia, Reflex Sympathetic Dystrophy, RSD (Complex Regional Pain Syndromes Type I), Causalgia, CRPS (Complex Regional Pain Syndromes Type II), Neurofibromatosis, Chronic Inflammatory Demyelinating Polyneuropathy, Sjogren's syndrome, Lupus, Interstitial Cystitis, Myasthenia Gravis, Hydrocephalus, nail-patella syndrome, residual limb pain, or the treatment of these conditions (410 ILCS 130/10(h))

In addition to regulating the use of medical cannabis, the Act defines how medical cannabis can be cultivated and sold, how many cultivation and dispensing locations are allowed in each State Police District, and where such facilities can be located with respect to sensitive land uses (e.g. schools and day care facilities). In Illinois, medical cannabis can only be produced by “cultivation centers”, which must be registered by the Illinois Department of Agriculture, and can only sell their product to registered “dispensary organizations”. Dispensary organizations, or “dispensaries”, are registered to “dispense cannabis, paraphernalia, or related supplies and educational materials to registered qualifying patients”. The State of Illinois has 22 Police Districts. Each district will be allowed to have one cultivation center. Illinois will have 60 dispensaries throughout the state, with the number in each Police District based on the district’s population. District 10, of which Champaign County is a part, can have up to two.

Local governments in Illinois have the authority to adopt reasonable zoning controls to determine where and how medical cannabis cultivation centers and dispensaries are located. The Act provides the following *minimum* requirements for locating medical cannabis facilities, to minimize their impacts on sensitive populations:

Sec. 105. Requirements; prohibitions; penalties for cultivation centers.

(c) A registered cultivation center may not be located within 2,500 feet of the property line of a pre-existing public or private preschool or elementary or secondary school or day care center, day care home, group day care home, part day child care facility, or an area zoned for residential use.

Sec. 130. Requirements; prohibitions; penalties; dispensing organizations.

(d) A dispensing organization may not be located within 1,000 feet of the property line of a pre-existing public or private preschool or elementary or secondary school or day care center, day care home, group day care home, or part day child care facility. A registered dispensing organization may not be located in a house, apartment, condominium, or an area zoned for residential use.

Some local governments in Illinois have already adopted zoning regulations regarding medical cannabis facilities. The following table summarizes several communities' regulations. The list is not exhaustive, but shows that zoning regulations range from somewhat restrictive (e.g. Bartlett, Homer Glen) to more permissive (e.g. Lake County, Decatur). Urbana's proposed use restrictions are also shown.

Jurisdiction	Dispensaries			Cultivation Centers		
	By Right	Conditional Use	Special Use	By Right	Conditional Use	Special Use
Bartlett			I-1 - Light Industry			I-2 - Economic Development Overlay
Decatur	M1 - Intense Commercial/Light Industrial			M1 - Intense Commercial/Light Industrial		
Homer Glen			I-1 - Industrial			I-1 - Industrial
Lake County*	GC - General Commercial LI - Limited Industrial II - Intensive Industrial			LI - Limited Industrial II - Intensive Industrial		
Naperville**	Industrial	Commercial			Industrial	
Schaumburg			Manufacturing***			Manufacturing***
Wilmette			GC1 - General Commercial 1			GC2 - General Commercial 2
<b>Urbana (proposed)</b>	<b>B-3 - General Business B-4 - Central Business IN-1 - Light Industrial</b>			<b>IN-2 - Heavy Industrial</b>	<b>AG - Agricultural</b>	<b>IN-1 - Light Industrial</b>

Sources: American Planning Association - Illinois Chapter; Illinois Municipal League

\*Considered making medical cannabis conditional uses, but felt that would be too restrictive.

\*\*Adopted additional separation requirements, and criteria to consider for reviewing conditional uses.

\*\*\*Created additional lighting, parking, product display, ventilation, and floor plan regulations.

## Discussion

Because these uses have not previously existed, there are currently no specific regulations for the principal use of medical cannabis cultivation centers or medical cannabis dispensaries in Urbana. Table V-1 does not list medical cannabis cultivation center or medical cannabis dispensary as a principal use. According to Section V-1.B of the Zoning Ordinance, when a principal use is proposed to be established that is not listed in Table V-1, the Zoning Administrator shall determine what is the most related or similar use. The proposed use would then be allowed under the same regulations as the most similar use. Medical cannabis cultivation centers and medical cannabis dispensaries are very specific uses, with unique restrictions placed upon them by the State of Illinois regarding how and where they can operate. In the case of both medical cannabis cultivation centers and medical cannabis dispensaries, there are no equivalent uses provided in the Table of Uses, due to the special circumstances unique to these uses.

In Table V-1, the uses most closely related to medical cannabis cultivation are “chemicals and allied product manufacturing” and “confectionary products manufacturing and packaging”.<sup>1</sup> Medical cannabis cultivation centers would fall somewhere in between those two uses in terms of the intensity of use; it is less intense than chemical manufacturing, but more intense and more restrictive than confectionary manufacturing. “Chemicals and allied product manufacturing” is a highly intensive use, and is only allowed as a Special Use in the IN-2 district. “Confectionary products manufacturing and packaging” is permitted in IN-1, IN-2, and as a conditional use in B-2, B-3, B-3U, B-4, and B-4E Districts. Medical cannabis cultivation centers grow and process cannabis into a variety of products, including smoke-able and edible cannabis (e.g. chocolate bars, fudge, caramels, brownies, cookies, peanut butter, etc.). Unlike chemical or confectionary manufacturing, medical cannabis cultivation centers are subject to siting requirements set forth by the State of Illinois. They must be located 2,500 feet from the property line of schools or daycare facilities, and cannot be located in residentially-zoned districts.

The Zoning Administrator proposes to allow medical cannabis cultivation centers as a permitted use in the IN-2 – Heavy Industrial, as a Special Use in the IN-1 – Light Industrial, and as a Conditional Use in the AG – Agricultural Districts. In addition, staff recommends that use guidelines be added to Article V of the Urbana Zoning Ordinance so that medical cannabis cultivation centers are required by local code to adhere to the proximity guidelines set forth in the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/). This would exclude such uses from residentially-zoned areas and require they be located at least 2,500 feet from schools and daycare facilities.

Table V-1 includes “drugstore”, which is a related use to cannabis dispensaries. Both are places where patients go to fill prescriptions that have been prescribed by medical doctors and to get advice about medication from licensed medical professionals. However, drugstores sell a variety of products

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<sup>1</sup> While medical cannabis cultivation involves the growing of cannabis plants – an agricultural activity – this is done in a highly controlled, usually indoor, facility where processing of the plants into finished medical products occurs after harvesting. The process is more akin to pharmaceutical manufacturing than to what would be considered a “normal” agricultural activity.

in addition to prescription medications, including food, office supplies, home supplies, and cosmetics. Cannabis dispensaries, by law, exist for only one purpose – to acquire medical cannabis from licensed cultivation centers to dispense to qualifying patients, along with related medical cannabis supplies and information. In addition, drugstores are allowed in Urbana by right in most business districts, and in the R-6B and MOR Districts, which are zoned for residential use. The State of Illinois explicitly prohibits cannabis dispensaries in any “area zoned for residential use”. Drugstores also have no restrictions on where they can be located in proximity to schools or daycare facilities. By State law, cannabis dispensaries cannot be located within 1,000 feet of the property line of schools or daycare facilities.

The Zoning Administrator proposes to allow medical cannabis dispensaries as a permitted use in the B-3 – General Business, B-4 – Central Business, and IN-1 – Light Industrial Districts. In addition, staff recommends that use guidelines be added to Article V of the Urbana Zoning Ordinance so that medical cannabis cultivation centers are required by local code to adhere to the proximity guidelines set forth in the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/). This would exclude such uses from being located in apartments, condominiums, or houses, or in residentially-zoned areas, and require they be located at least 1,000 feet from schools and daycare facilities.

## **Comprehensive Plan**

The following goals and objectives of the 2005 Urbana Comprehensive Plan relate to this case:

### **Goal 17.0 Minimize incompatible land uses.**

#### *Objectives*

17.1 Establish logical locations for land use types and mixes, minimizing potentially incompatible interfaces, such as industrial uses near residential areas.

17.2 Where land use incompatibilities exist, promote development and design controls to minimize concerns.

### **Goal 28.0 Develop a diversified and broad, stable tax base.**

#### *Objectives*

28.3 Promote an expanded tax base through aggressive marketing and development efforts aimed at attracting new business, retaining and expanding existing business, and annexation.

### **Goal 29.0 Develop a focused approach to economic development.**

#### *Objectives*

29.2 Strengthen Urbana’s standing as a regional health-care center by supporting appropriately sited development opportunities and encouraging supportive services and amenities to benefit the sector.

The proposed text amendment would accomplish these goals and objectives in the following

ways. First, the amendment would establish logical locations for potentially incompatible medical cannabis uses, separate from residential and sensitive institutional uses. Second, the amendment would create new medical cannabis uses that could provide additional tax revenues<sup>2</sup> for the City of Urbana, to help diversify and broaden the City's tax base. The City would also be taking a proactive approach toward attracting new medical businesses by adding medical cannabis uses and establishing location requirements for medical cannabis facilities. Finally, this text amendment could strengthen Urbana's standing as a regional health-care center, by establishing the City as a regional center serving the needs of qualifying patients who require medical cannabis.

### **Proposed Text Changes**

The proposed changes are listed below, using a strikethrough and underline notation system. A strikethrough is used to indicate ~~deleted language~~, while an underline is used to indicate added language. Commentary on the proposed changes are listed *in italics*.

### **Section II-3. Definitions**

*Medical Cannabis Cultivation Center: A facility operated by an organization or business that is registered by the Illinois Department of Agriculture to perform necessary activities to provide only registered medical cannabis dispensing organizations with usable medical cannabis.(410 ILCS 130/10(e))*

*Medical Cannabis Dispensary: A facility operated by an organization or business that is registered by the Illinois Department of Financial and Professional Regulation to acquire medical cannabis from a registered cultivation center for the purpose of dispensing cannabis, paraphernalia, or related supplies and educational materials to registered qualifying patients.(410 ILCS 130/10(o))*

*This change would add definitions for Medical Cannabis Cultivation Centers and Medical Cannabis Dispensaries. The proposed definitions mirror those found in the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/).*

### **Section V-13. Regulation of Medical Cannabis Uses**

- A. Medical cannabis uses listed as permitted in Table V-1 shall only be permitted as provided herein so that these uses will not unduly interfere with or adversely affect the public health, safety, comfort, adjacent land uses, property values, or general welfare of the community.
- B. Medical cannabis uses shall only be allowed in locations that are consistent with the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/):
  - 1. No medical cannabis cultivation center shall be located or established in a building or structure within 2,500 feet of the property line of a pre-existing public or private preschool or elementary school or secondary school or day care center, day care home, group day care home, part day

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<sup>2</sup> According to the Act, medical cannabis would be taxed at a 1% rate, the same as pharmaceutical drugs. In addition, there will be a 7% privilege tax on dispensaries and cultivation centers, which will accrue to the State to cover the costs of administering and policing these facilities.

child care facility, or on any lot in an R-1, R-2, R-3, R-4, R-5, R-6, R-6B, R-7, B-3U or MOR Zoning District.(410 ILCS 130/105(c))

2. No medical cannabis dispensary shall be located or established in a building or structure within 1,000 feet of the property line of a pre-existing public or private preschool or elementary or secondary school or day care center, day care home, group day care home, or part day child care facility, or in a house, apartment, or condominium, or on any lot in an R-1, R-2, R-3, R-4, R-5, R-6, R-6B, R-7, B-3U or MOR Zoning District.(410 ILCS 130/130(d))

*These changes would add regulations for the siting of medical cannabis facilities to ensure consistency with the stipulations of the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/).*

**Table V-1. Table of Uses**

Principal Uses	R-1	R-2	R-3	R-4	R-5	R-6	R-6B	R-7	AG	B-1	B-2	B-3	B-3U	B-4	B-4E	CCD	CRE	MOR	IN-1	IN-2
Medical Cannabis Cultivation Center									C										S	PI
Medical Cannabis Dispensary												P		P					P	

*(Note: Medical Cannabis Cultivation Center will be placed under the “Industrial” section of the use table; Medical Cannabis Dispensary will be placed under the “Miscellaneous Business” section.)*

*This change would establish which districts medical cannabis cultivation centers and dispensaries would be allowed in, and specify that a Special Use or Conditional Use Permit is required, depending on the district.*

*Staff is proposing that medical cannabis cultivation centers be allowed by right in the IN-2 district, by special use in the IN-1 district, and as a conditional use in the AG district. Cultivation centers more closely resemble pharmaceutical manufacturing than agricultural activities, which is why staff recommend they be permitted by right in heavy industrial areas, while requiring additional review in agricultural and light industrial districts.*

*Medical cannabis dispensaries are proposed as an allowable use in B-3, B-4, and IN-1 districts. Staff views dispensaries as similar to pharmacies or drug stores, but with greater restrictions regarding proximity to residential uses. Hence, dispensaries are not proposed as an allowable use in any neighborhood- or university-oriented business districts. Furthermore, the state act explicitly bars dispensaries from being located in any “house, apartment, or condominium, or an area zoned for residential use”. (410 ILCS 130/130(d))*

## Summary of Staff Findings

1. The Zoning Administrator is proposing a text amendment to the Zoning Ordinance in order to add definitions and establish use provisions for medical cannabis cultivation centers and medical cannabis dispensaries.
2. Medical cannabis is legal in Illinois as of January 1, 2014 and its' use is regulated by the provisions of the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/) ("the Act"). The Act also regulates where and how medical cannabis cultivation centers and dispensaries can operate.
3. The proposed amendment will modify Articles II and V of the Urbana Zoning Ordinance to allow medical cannabis cultivation centers and dispensaries in limited districts, subject to siting rules set forth in the Act.
4. The proposed amendment would prohibit medical cannabis cultivation centers from being located within 2,500 feet of parcels containing schools or daycare facilities or any residentially-zoned parcels.
5. The proposed amendment would allow medical cannabis cultivation facilities in IN-2 – Heavy Industrial Districts as a permitted use, in IN-1 – Light Industrial Districts if approved by the City Council as a Special Use, and in AG – Agricultural Districts if approved by the Zoning Board of Appeals as a Conditional Use.
6. The proposed amendment would prohibit medical cannabis dispensaries from being located within 1,000 feet of parcels containing schools or daycare facilities or in any house, apartment, or condominium.
7. The proposed amendment would allow medical cannabis dispensaries in B3 – General Business, B4 – Central Business, and IN-1 – Light Industrial Districts as a permitted use.
8. The proposed amendment is consistent with the goals and objectives of the 2005 Urbana Comprehensive Plan to minimize potentially incompatible land uses, to develop a diversified and broad, stable tax base, and to develop a focused approach to economic development.
9. The proposed amendment conforms to notification and other requirements for the Zoning Ordinances as required by the State Zoning Act (65 ILCS 5/11-13-14).



## Options

The Plan Commission has the following options for recommendation to the Urbana City Council regarding Plan Case 2234-T-14:

- a. forward this case to City Council with a recommendation for approval as presented herein;
- b. forward this case to City Council with a recommendation for approval as modified by specific suggested changes; or
- c. forward this case to City Council with a recommendation to deny the proposed amendment.

## Staff Recommendation

Based on the evidence presented in the discussion above, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommends that the Plan Commission make a recommendation to City Council to **APPROVE** the proposed text amendment as presented herein.

Attachments:

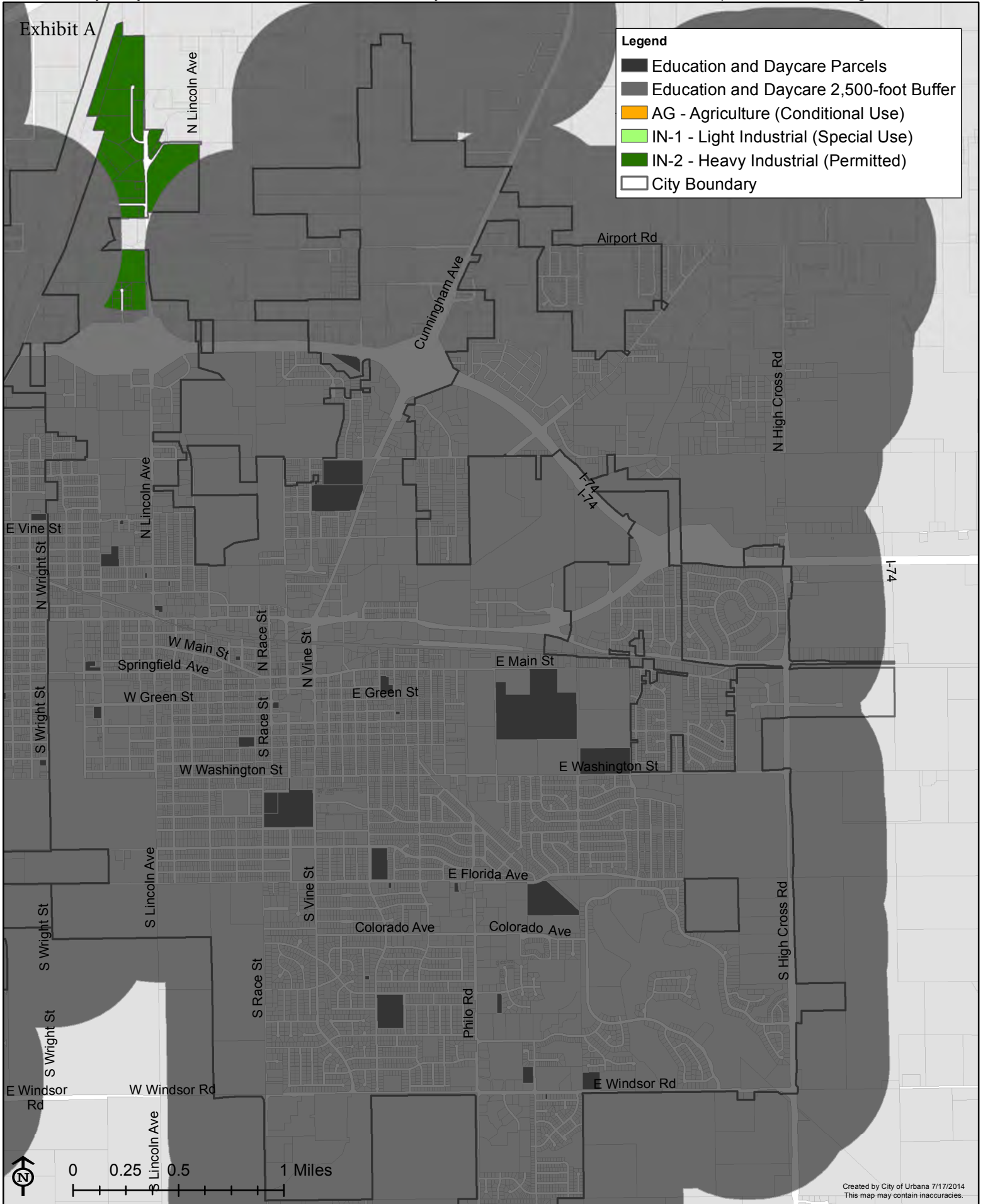
Exhibit A: Map – Potential locations for Medical Cannabis Cultivation Centers in Urbana

Exhibit B: Map – Potential locations for Medical Cannabis Dispensaries in Urbana

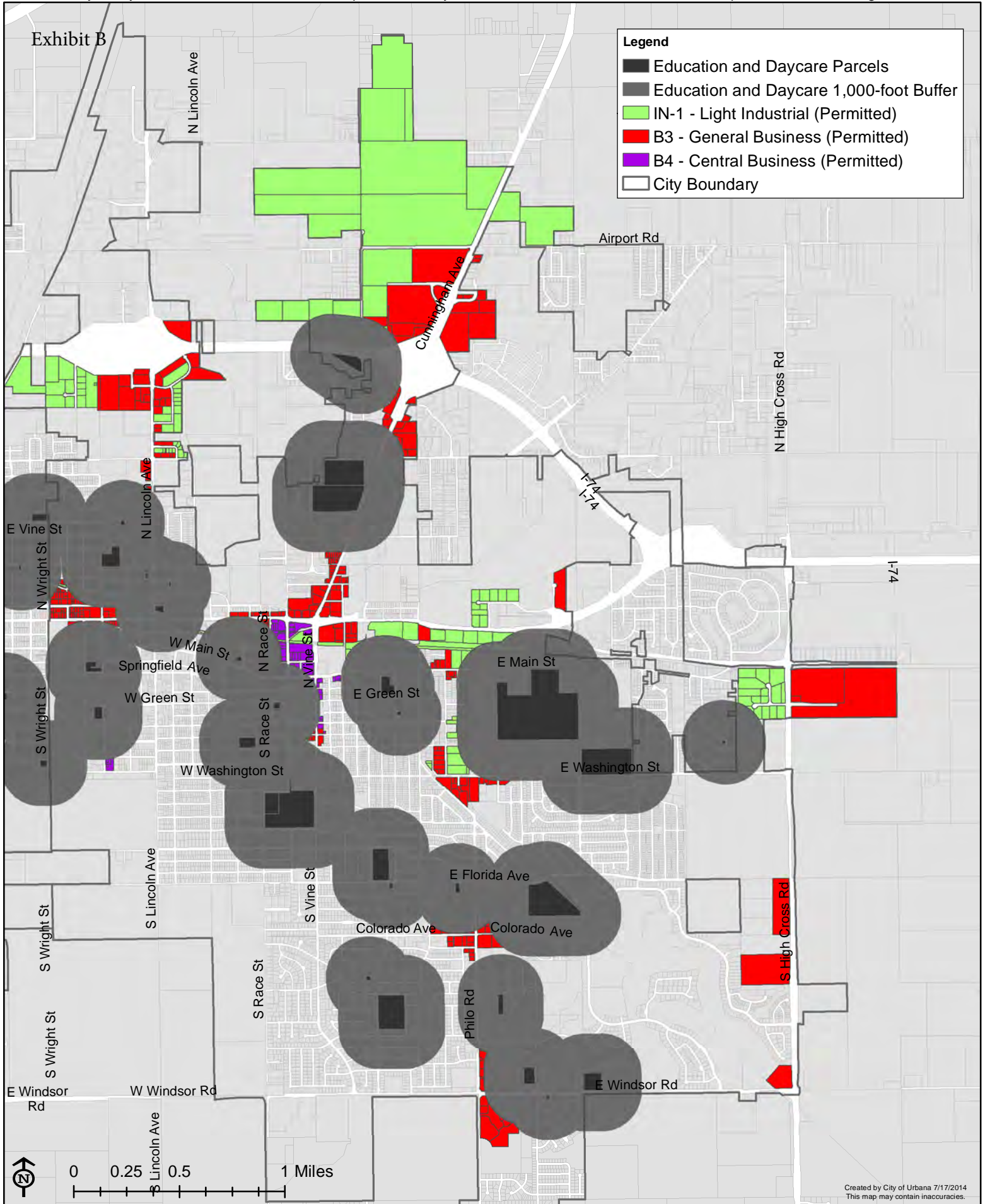
Exhibit C: Illinois Municipal League Legal Brief – Common Questions Concerning Medical Cannabis

Preliminary Analysis of Sites Where Cannabis Cultivation May Be Permissible Under State Law and Proposed Urbana Zoning Amendments

Exhibit A



Preliminary Analysis of Sites Where Cannabis Dispensaries May Be Permissible Under State Law and Proposed Urbana Zoning Amendments





# Common Questions Concerning Medical Cannabis

BY BRIAN DAY, LEAD STAFF ATTORNEY

Illinois' medical-cannabis law took effect on January 1, 2014. The new law, titled the Compassionate Use of Medical Cannabis Pilot Program Act, allows the use of cannabis by residents who have a medical need and have obtained a permit. The new law also sets forth procedures to license and regulate where cannabis may be grown and where it may be sold.

As the new law begins to be implemented, the IML has received a number of questions about the medical cannabis law and the extent to which communities have any authority or duty to regulate cannabis use under the medical-cannabis law. Municipalities are given the authority to adopt reasonable zoning controls with respect to cultivation centers and dispensaries. Most of the regulation on this issue, however, is conducted by the state government. The purpose of this article is to cover some of the contents of the medical-cannabis law and discuss some areas of concern to communities.

## 1. WHO MAY USE MEDICAL CANNABIS?

A "qualifying patient" may obtain up to 2.5 ounces of cannabis every two weeks. The Department of Public Health may grant a waiver for a patient to obtain additional amounts.

In order to be designated as a "qualifying patient" a person must be diagnosed by a physician as having a debilitating medical condition. The statute lists 33 medical conditions that qualify. The Department of Public Health may approve additional conditions. The patient must be diagnosed by a doctor of medicine or osteopathy who has a current controlled substances license. Other medical professionals are not authorized to recommend a patient for medical cannabis.

A qualifying patient may not:

- Be under the age of 18;
- Have a felony drug conviction; or
- Work in certain professions, including law enforcement personnel, firefighters, and commercial drivers.

Once the physician has diagnosed the patient and recommended him or her for medical cannabis, the patient may apply to the Department of Public Health for status as a medical-cannabis patient. The Department will issue registry cards to qualifying patients and maintain a registry of those patients. Law enforcement agencies will have access to the registry.

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**Municipalities are given the authority to adopt reasonable zoning controls** with respect to cultivation centers and dispensaries.

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## 2. HOW IS THE CANNABIS GROWN AND SOLD?

A qualifying patient must obtain his or her medical cannabis from a dispensary, which, in turn must get the cannabis from a cultivation center.

A dispensary is operated by a business or organization that is licensed and regulated by the Illinois Department of Financial and Professional Regulation. The statute allows for up to 60 dispensaries "geographically dispersed throughout the State."

A cultivation center is operated by a business or organization that is licensed and regulated by the Illinois Department of Agriculture. Cultivation centers are subject to a strict set of rules to be developed by the Department of Agriculture, including labeling and cannabis testing requirements, 24-hour video surveillance, photo IDs for staff, cannabis tracking systems, and inventory control measures. The statute allows for up to 22 cultivation centers (one for each Illinois State Police district).

IML LEGAL BRIEF CONTINUES ON PAGE 12

### 3. ARE THERE RESTRICTIONS ON THE USE OF MEDICAL CANNABIS ANYWHERE?

There are limitations on how and where medical cannabis may be used. A registered qualifying patient or designated caregiver must keep their registry identification card in his or her possession at all times when engaging in the medical use of cannabis.

It is illegal to **possess** medical cannabis:

- on a school bus or on school property
- in a correctional facility
- in a vehicle, except in a sealed, tamper-evident medical cannabis container
- in a residence used to provide licensed child care or similar social service care.

It is illegal to **use** medical cannabis:

- on a school bus or on school property
- in a correctional facility
- in a vehicle
- in a residence used to provide licensed child care or similar social service care
- in a public place where the user could be observed by others
- in proximity to a minor.

It is illegal to **smoke** medical cannabis:

- in a public place where the user could be observed by others
- in a healthcare facility

- in any location where smoking is prohibited under the Smoke-Free Illinois Act.

A private business and a college or university may prohibit or restrict the use of medical cannabis on its property.

### 4. CAN COMMUNITIES CONTROL WHERE CANNABIS IS GROWN AND SOLD?

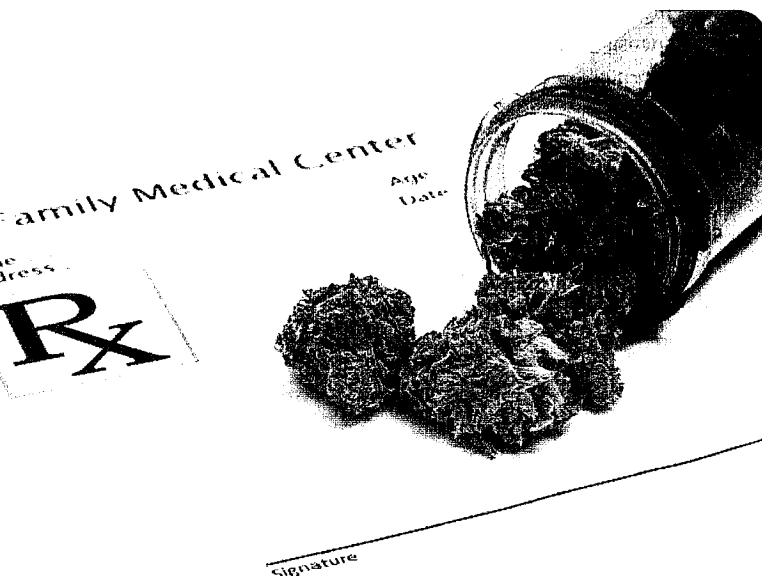
There are statutory restrictions on where a dispensary or a cultivation center may be located. In addition, municipalities have the authority to enact reasonable zoning restrictions on cultivation centers or dispensaries.

A cultivation center may not be located within 2,500 feet of a pre-existing school, daycare, or any residential district. Similarly, a dispensary may not be located within 1,000 feet from a school or daycare. Dispensaries are also prohibited in a house, apartment, condominium, or an area zoned for residential use. These distance requirements are measured from the property line of the prohibited properties rather than the buildings. These restrictions severely limit where a facility might be located. In many cases, due to the location of schools and daycare properties and, particularly, residential zoned property, there may be few (if any) locations open to medical-cannabis facilities. Legislation is currently being considered in the Illinois General Assembly that would only prohibit these facilities in areas that are zoned **exclusively** or **predominately** residential. It would allow these facilities to be located in areas that are mixed residential and commercial use. Municipal officials should familiarize themselves with the location of schools, daycares, or residentially-zoned property so that they will be aware of the potential locations where a dispensary or cultivation center could legally locate.

In addition to the distance limitations, the statute authorizes municipalities to enact “reasonable zoning ordinances or resolutions” regulating registered medical cannabis cultivation centers or medical cannabis dispensing organizations. The zoning regulations may not conflict with the statute, Act, or the administrative rules of the Department of Agriculture or Department of Public Health. Home rule powers are preempted, so they have the same zoning authority as non-home rule communities.

The statute is silent on the nature of the zoning restrictions. Municipalities have taken or considered the following measures with respect to zoning and medical cannabis:

- Identifying the zoning district or districts in which cultivation centers and dispensaries are permitted.
- Requiring special-use permits for cultivation centers and dispensaries rather than allowing them as a permitted use.
- Imposing reasonable conditions on any special-use permit to mitigate the impacts of their activities.





The statute prohibits municipalities from unreasonably prohibiting the cultivation, dispensing, and use of medical cannabis. This provision would appear to prevent the municipality from banning medical cannabis entirely from the municipality. Some municipalities, however, have enacted a temporary moratorium on medical cannabis facilities while it reviews its zoning regulations so that a new facility does not become a "preexisting use" before the cannabis zoning regulations are adopted. This approach should be used with caution. An extended duration of a moratorium may lead to legal challenges.

## **5. CAN COMMUNITIES REGULATE MEDICAL CANNABIS USE BY PUBLIC EMPLOYEES?**

Just because a qualifying patient is allowed to use medical cannabis, they do not have carte blanche authority to use the drug while at work. An employer can prohibit the employee from using drugs or being under the influence of drugs while on the job.

An employer may not discriminate against an employee solely for being a qualified patient. The employer, however, can adopt and enforce a drug-free workplace policy, so long as the policy is applied in a non-discriminatory manner. The employer can also enact reasonable regulations concerning the consumption, storage, or timekeeping requirements for qualified patients. Employers can discipline an employee for failing a drug test if that failure would put the employer in violation of federal law or jeopardize federal contracting or funding.

One potential challenge to enforcing a drug-free workplace policy is the determination of when an employee is impaired while at work. Unlike alcohol, where impairment can be presumed by a specific blood-alcohol level, there is no objective standard for measuring cannabis impairment. The statute provides that an employer cannot be sued for actions taken upon a good-faith belief that the employee used or possessed cannabis or was impaired by cannabis during work hours. The Act also states that an employer cannot be sued over an injury or loss to a third party if the employer did not know or have reason to know that the employee was impaired.

Municipalities should evaluate their existing employment policies with respect to drug use and possession. If a written policy is not currently in place, one should be enacted and incorporated into the appropriate personnel rules.

There are still many questions concerning the implementation of medical cannabis. It is advisable to consult your municipal attorney with respect to any rules or regulations concerning medical cannabis.

Additional information is available on the IML website.

## **MUNICIPAL CALENDAR - MAY**

A person subject to the filing requirements of the Illinois Governmental Ethics Act must file a statement on or before May 1 of each year, unless he has already filed a statement in relation to the same unit of government in that calendar year. (5 ILCS 420/4A-105.)

The annual appropriation ordinance must be passed by municipalities with less than 500,000 inhabitants during the first quarter of the fiscal year unless the municipality has adopted the Optional Budget Officer System (65 ILCS 5/8-2-9.1 through 8-2-9.10) in lieu of the Appropriation Ordinance System. (65 ILCS 5/8-2-9.)

In municipalities with a population between 2,000 and 500,000, the proposed appropriation ordinance must be made available to public inspection not less than 10 days before its adoption and there must be at least one public hearing thereon. Notice of the hearing shall be given by publication at least 10 days before the time and place of the hearing. The notice must state the time and place of the hearing and before any final action is taken on the ordinance, the corporate authorities may revise, alter, increase or decrease the items contained in the ordinance. (65 ILCS 5/8-2-9.)

In municipalities with over 500 in population, the ordinance must be published in pamphlet form or in a newspaper with a general circulation in the municipality within 30 days after its passage. In municipalities with less than 500 in population where no newspaper is published, publication may be made by posting a notice in three prominent places in the municipality. The annual appropriation ordinance adopted under Section 8-2-9 shall take effect upon passage. (65 ILCS 5/1-2-4.)

The annual appropriation ordinance or budget, as well as an estimate of revenues anticipated to be received by the municipality in the following fiscal year, must be filed with the county clerk within 30 days of the adoption of the appropriation ordinance or budget. (35 ILCS 200/18-50.)

Within 30 days after the expiration of the fiscal year of the city or village [fiscal year begins on election day unless otherwise provided], the library board shall submit to the council or board of trustees and the Illinois State Library an annual statement of liabilities including those for bonds outstanding or due for judgments, settlements, liability insurance or for amounts due under a certificate of the board. (75 ILCS 5/4-10.)

The treasurer of the police pension funds in all municipalities between 5,000 and 500,000 population shall file an annual report with the trustees and council on the second Tuesday of May. (40 ILCS 5/3-141.)

The term of office of the inspectors of the house of corrections, appointed by the mayor, begins the first Monday in May. (65 ILCS 5/11-4-2.)

Approve resolution authorizing officials and employees to attend the 2014 conference of the Illinois Municipal League. The 2014 annual conference will be held September 18 - 20 at the Hilton Chicago Hotel.

**\*\*NOTE:** If the fiscal year for your municipality is a period other than May 1 - April 30, the items covered under the month of May having to do with the fiscal year will fall under the first month of the particular fiscal year adopted by your municipality.