Item #1C:

Report Of PCZBA Meeting June 3, 2014:

Zoning Code Amendments Re: Medical Cannabis

06/04/14

Village of Long Grove Illinois

MEMORANDUM

TO:	Village of Long Grove Planning Commission & Zoning Board of Appeals
FROM:	JAMES M. HOGUE, Village Planner
DATE:	May 27, 2014
RE:	Public Hearing – Compassionate Use of Medical Cannabis

At the May meeting it was announced that per state stature a public hearing would be held at the June Meeting regarding the Illinois Compassionate Use of Medical Cannabis Pilot Program Act. The Village needs to consider amending its zoning regulations to accommodate dispensaries and cultivation centers to the extent required by the Act.

Attached is information provided by the Illinois Municipal League on the subject.

It is anticipated the Village Attorney will have additional information available at the meeting.

Should you have any questions or concerns feel free to contact me at (847) 634-9440.

ILLINOIS MUNICIPAL
REVIEW
May 2014

- IML Legal Brief: Common Questions Concerning Medical Cannabis
- Making Sense of Electronic Records - Part 2 The E-mail Monster

ILLINOIS MUNICIPAL LEAGUE

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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 Heath 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.

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

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).

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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:

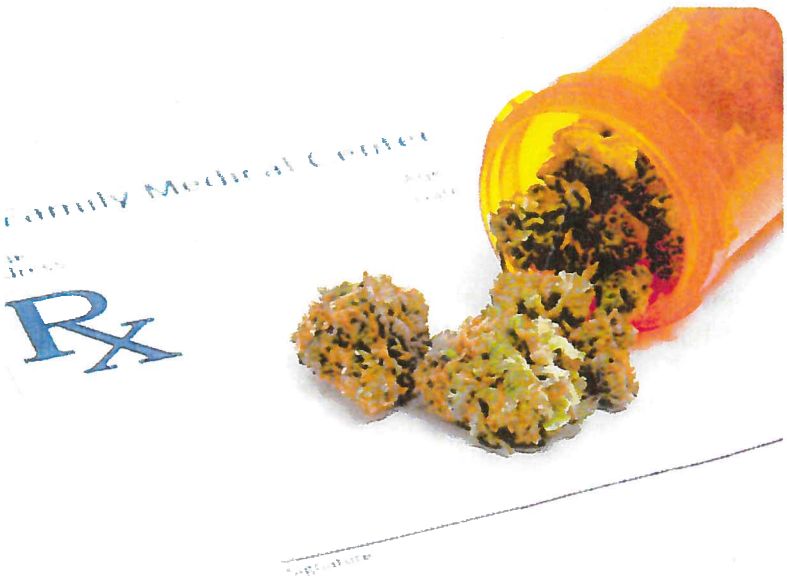
- on a school bus or on school property
- in a correctional facility
- in a vehicle, except in a sealed, tamper-evident medical cannabis container
- in a residence used to provide licensed child care or similar social service care.

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 blanch 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.

LEGAL NOTICE
Village of Long Grove
NOTICE OF PUBLIC HEARING CONCERNING POTENTIAL AMENDMENTS TO THE LONG GROVE ZONING CODE RELATING TO THE ILLINOIS COMPASSIONATE USE OF MEDICAL CANNABIS PILOT PROGRAM ACT

NOTICE IS HEREBY GIVEN THAT a public hearing will be held by the Plan Commission/Zoning Board of Appeals of the Village of Long Grove on June 3, 2014 at 7:00 p.m. in the Village Board Room, located at 3110 Old McHenry Road, Long Grove, Illinois (unless otherwise posted) to hear and consider testimony concerning whether the Long Grove Zoning Code should be amended in light of the adoption of the Illinois Compassionate Use of Medical Cannabis Pilot Program Act, 430 ILCS 130/1 et seq., including specifically whether to include state-authorized medical cannabis dispensing organizations and medical cannabis cultivation centers as special uses in non-residential zoning districts in the Village.

All persons desiring to be heard on the matter of the potential amendments to the Long Grove Zoning Code may appear at the Public Hearing and provide testimony. Written testimony submitted to James Hogue, the Village Planner of the Village, prior to 5:00 P.M. Friday, May 23, 2014 will be included in the Plan Commission/Zoning Board of Appeals packet.

BY ORDER OF THE PLAN COMMISSION/ZONING BOARD OF APPEALS OF THE VILLAGE OF LONG GROVE

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Daily Herald

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