

ZONING FOR MEDICAL CANNABIS & HEMP

Fact Sheet

Summer 2019

With the legalization of medical cannabis in West Virginia, local governments with zoning should promptly incorporate provisions specifically to address community concerns related to medical cannabis uses. Otherwise, only the regulations placed on general uses already permitted through existing zoning, such as retail stores, agriculture, and manufacturing, will limit medical cannabis as a dispensary, grower, or processing facility, respectively.

Definitions

Chapter 16A of the West Virginia Code defines four distinct medical cannabis uses that may be incorporated into a local zoning ordinance: dispensaries, growers, processing facilities, and health care medical cannabis organizations. The last of these is a vertically integrated health care system, essentially a hospital or medical clinic offering a complete spectrum of care, that is approved to grow, process, or dispense medical cannabis as part of a research study.

Supplemental Provisions

Chapter 16A establishes minimum general requirements for dispensaries, growers, and processing facilities when regulated through municipal zoning: Growers and processors must be regulated at least as stringently as other manufacturing, processing, and production facilities in the same district. Dispensaries must be regulated at least as stringently as other commercial facilities in the same district. These minimum requirements likely are not required in county zoning of dispensaries, growers, and processing facilities.

Chapter 16A also details specific land use requirements for dispensaries, whether regulated by a county or municipality. Dispensaries must be located in enclosed and secure facilities, may not be located at the same site as a growing or processing facility, and may not be located within 1000 feet of a school or daycare.

Beyond these minimum general requirements and those detailed for dispensaries, zoning ordinances may establish more stringent requirements on dispensaries, growers, and processors through time, place, and manner restrictions on these operations. Time, place, and manner restrictions include but are not limited to hours and days of operation, districting, setbacks from lot lines, setbacks from sensitive uses, and limitations on combining uses.

Medical Cannabis Organization is a general term used to refer to dispensaries, growers, and processing facilities collectively, but is not itself a distinct land use.

Four Medical Cannabis Land Uses:

- Grower
- Processor
- Dispensary
- Health Care Medical Cannabis Org.

Prohibiting Cannabis

A county may prohibit medical cannabis dispensaries, growers, or processors by vote, or through a county zoning ordinance. A municipality may prohibit or limit the number of medical cannabis dispensaries, growers, or processors through zoning.

However, health care medical cannabis organizations should not be prohibited by a county or municipality because the land use impacts are essentially equivalent to the impacts of a hospital or medical clinic—health care medical cannabis organizations should be allowed on the same terms and conditions as a hospital or medical clinic.

A Note on Hemp

Under the 2018 Farm Bill, hemp (very low levels of THC) is now legal, subject to state and federal regulation. West Virginia has not completed regulations for hemp. Those regulations may contain some guidance or requirements for local government regulations. Until that time, local governments in West Virginia may regulate hemp production, processing, and sales through zoning ordinances. However, no reasonable public purpose supports distinguishing hemp from other agricultural crops. Therefore, hemp should be regulated just as any other agricultural crop.

If a local government wants to regulate odors, noise, lights, and other disturbances from hemp activities, the regulations should be generally applicable to agricultural activities and not limited to hemp. Note, however, that the West Virginia Right to Farm Act places limits on local regulation of agricultural production activities. Although it is unclear whether the Act applies to hemp, local governments should be aware of the limits the Act places on local government regulation of agricultural activities.