



# Technical Brief

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May 2022

## Medical Marijuana Frequently Asked Questions

The Mississippi Municipal League (MML) has surveyed its membership about Medical Marijuana (MM) and hosted a webinar on the subject with attorneys from Butler Snow LLP. From the results of that survey and the questions received during the webinar, MML has put together the following list of Frequently Asked Questions.

### General Questions

- What areas, other than zoning, do Cities need to be aware of?
  - Whether to opt out of allowing medical marijuana (“MM”) establishments
  - Review State regulations promulgated by the MS Department of Health and the MS Department of Revenue
  - How MM is taxed
  - Whether to require permits/licenses for MM establishments to operate and what the requirements will be
  - Time, place and manner regulations
- Are there any sample ordinances on the regulation of both cultivation, growth and dispensaries?
  - The MS Municipal League has a form resolution for opting out of MM on its website
- What should we be verifying before allowing these entities to operate?
  - MS Department of Health and the MS Department of Revenue are responsible for licensing MM establishments. To receive a license from the State, the MM establishments are required to include a copy of their local license/business permit (if required) and certify that the MM establishment complies with local zoning ordinances

### Opting out **(THE DEADLINE TO OPT OUT HAS PASSED)**

- What are the exact steps needed to legally opt out?
  - Cities have 90 days from February 2, 2022 to opt out
  - Cities can opt out of allowing MM by a simple majority vote
  - Send a certified copy of the resolution and minutes opting out to:

- (1) the MS Department of Health (there is a link to a “Local Government Opt-Out Verification Form” on the State Department of Health website) and
  - (2) the MS Department of Revenue at [cannabis@dor.ms.gov](mailto:cannabis@dor.ms.gov)
- Can you opt out of one aspect of MM (cultivation, processing, distribution and selling), or must a City opt out entirely?
  - Cities can opt out of one or more of the cultivation, processing, distribution and selling of MM
- Is there a requirement for publishing intent to opt out?
  - The Act does not require notice be published in a newspaper. However, it is unclear about whether to post notice of the meeting. To be sure, the MML recommends that you post notice of the meeting to discuss opting out; in any event, the City should discuss notice requirements with your City attorney
- What happens if the City chooses to not opt out, but the county does opt out?
  - The City is not affected

### **Taxation**

- What does the law say about taxation due Cities?
  - The sale of MM will be taxed at the 7% sales tax rate
  - There is a 5% State excise tax on MM cultivation facilities
- Do Cities still get the rebate from sales tax on MM like we do on other items?
  - Yes, MM sales are taxed at the standard 7% sales tax rate, and Cities will get the normal portion of that 7% (18.5%) rebated to them monthly
- Is local taxation allowed?
  - There is no additional authority in the Act for Cities to tax MM establishments other than what is already allowed by law

### **Permitting/Licensing**

- Will MM establishments be required to register with the City or only the State?
  - City may require a local permit/business license
  - MM establishments are required to be licensed by the State. The MS Department of Revenue is responsible for licensing MM dispensaries. The MS Department of Health will license all other MM establishments
- Does the City receive any portion of the State application fee or annual State license fee?
  - No, but a City may charge a reasonable fee for a license/permits that is consistent with other fees charged
- May a City charge a fee for a MM establishment local license/permit?
  - Yes, as long as the fee is reasonable and consistent with other fees charged

- Can a City impose stricter licensing requirements than those of regular privilege license?
  - Cities cannot make it impractical for MM establishments to operate, and generally must treat MM establishments as any other business unless there is a legitimate regulatory purpose for doing otherwise
- What type of local licenses will MM establishments need?
  - Cities need to consult with their City attorneys to decide
- Who will be responsible for licensing sellers and buyers?
  - The MS Department of Health and the MS Department of Revenue

### **Zoning**

- Are there any Court Case or Attorney General Opinions that discuss the zoning of MM establishments?
  - The Attorney General issued an opinion to the City of Southaven, MS, April 15, 2022 (the “Southaven AG Opinion”), and encourages all Cities interested in zoning MM establishments to review it prior to enacting any zoning ordinances or regulations
- What zoning restrictions will apply for MM establishments?
  - Dispensaries, Research Facilities and Testing Facilities may be located in commercial areas, where commercial use is authorized, or where commercial use is not prohibited
  - Cultivation Facilities and Processing Facilities may be located in industrial areas and agricultural areas. Cultivation Facilities and Processing Facilities may be located in commercial areas if the City changes its zoning ordinance or grants variance
- If a municipality does not opt out would the only zoning-type restrictions contained in the Act on time, place and manner be the 1,000 foot restriction from schools, etc. and the 1,500 foot restriction between dispensaries?
  - The Southaven AG Opinion states that Cities have the authority to impose zoning restrictions on MM establishments that are consistent with (1) the City’s comprehensive plan, (2) State regulations, (3) the Act and (4) do not make it impractical for a MM establishment to operate
- Can a City pass any ordinance that treats MM establishment any different than other retail or farming businesses in the City?
  - Yes, but only to the extent that it can be reasonably justified and does not make it impractical for MM establishments to operate
- Is there any special zoning that must be done?
  - There is no special zoning that is required. However, the Southaven AG Opinion states that “a City may restrict or limit the location of medical cannabis

establishments and the manner in which they operate through ordinances or regulations governing the time, place and manner” of such establishments and may also “enact local zoning ordinances . . . designating specific types of commercial zones, such as a medical commercial zone, in which medical *dispensaries* may operate” as long as such ordinances and regulation are consistent with the City’s comprehensive plan and do not make it impractical for the MM establishments to operate

- Who is responsible for Code enforcement?
  - Cities are responsible for enforcement of their ordinances, and may establish penalties for the violation of the ordinances

### **Time, Place and Manner Restrictions**

- May Cities regulate dispensaries?
  - Cities may impose time, place and manner restrictions on dispensaries, but may not enact ordinances that prohibit dispensaries from operating or make their operation impractical
- What special security measures will be required of the operation or dispensary to have in place?
  - There are several security requirements in the Act including requiring security cameras around MM establishments, requiring background checks for employees of MM establishments, restricting entry of minors to dispensaries, and seed to sale tracking. The MS Department of Health and MS Department of Revenue is drafting regulations that will address these and other security requirements
- Are there any signage and advertisement restrictions within the Act?
  - The Act requires the MS Department of Health and MS Department of Revenue to promulgate such regulations
- Can a City regulate the signage being used?
  - Yes, but consult with your City attorney as such regulation must be consistent with State regulations and may be limited by Constitutional concerns
- Will sellers be allowed to set up trailers/food truck-like setups to sell (like the way some businesses sell alcohol/alcoholic slushes)?
  - No. The Act prohibits drive-throughs, curbside delivery or other off-site delivery
- What would the deadline be to pass any local restrictions on time, place and manner (including signage and advertising)?
  - There is no general deadline to change zoning ordinances or to enact time, place and manner restrictions. It is recommended, however, that any changes to zoning ordinances, local licensing/permitting requirements, or otherwise be in place as soon as possible because MS Department of Health and MS Department of

Revenue will begin accepting licensing applications in June and July, respectively.

