

Arkansas Municipal League



What Cities Need to Know about the Arkansas Medical Marijuana Amendment

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In 2016, the voters of Arkansas passed the Arkansas Medical Marijuana Amendment² (AMMA), which legalized and regulated the use of medical marijuana in Arkansas. The two most common questions municipalities have are:

1. What can I do as an employer?
2. How should we zone facilities associated with medical marijuana?

¹ This informational document is provided to members of the Arkansas Municipal League and is in no way to be considered legal advice. This is an educational document only.

² Arkansas Constitutional Amendment 98, Section 1 *et seq.*, as amended. All references in this document relate to specific provisions within Amendment 98.

The basics of AMMA

AMMA makes the regulated medical use of marijuana legal under Arkansas state law, while recognizing the drug remains illegal under federal law. This is important, because AMMA will not protect growers, distributors, or users of medical marijuana from federal prosecution.

AMMA establishes a system for growing, acquiring, and distributing marijuana for medical purposes. Broadly speaking, this process is divided between “cultivation” facilities, which grow the plant, and “dispensaries,” which distribute medical marijuana to qualifying patients and designated caregivers. A “designated caregiver” is a person 21 years old or older, without certain felony convictions, who has agreed to assist a physically disabled qualifying patient with the medical use of marijuana, and who has registered with the Department of Health. Ark. Const. amend. XCVIII, § 2.

Under AMMA a “qualifying medical condition” is one or more of the following:

“(A) Cancer, glaucoma, positive status for human immunodeficiency virus/ acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Tourette’s syndrome, Crohn’s disease, ulcerative colitis, post-traumatic stress disorder, severe arthritis, fibromyalgia, Alzheimer’s disease, or the treatment of these conditions;

(B) A chronic or debilitating disease or medical condition or its treatment that produces one (1) or more of the following: cachexia or wasting syndrome; peripheral neuropathy; intractable pain, which is pain that has not responded to ordinary medications, treatment, or surgical measures for more than six (6) months; severe nausea; seizures, including without limitation those characteristic of epilepsy; or severe and persistent muscle spasms, including without limitation those characteristic of multiple sclerosis; and

(C) Any other medical condition or its treatment approved by the Department of Health under § 4 of this amendment; . . .” Ark. Const. amend. XCVIII, § 2.

A qualifying patient under AMMA is a person who has been diagnosed by a physician as having a qualifying medical condition and who has registered as required under AMMA. Ark. Const. amend. XCVIII, § 2. AMMA protects qualified patients, caregivers, growers, providers, and doctors from arrest, prosecution, penalty or discrimination under Arkansas law. It does not offer protection from federal law.

AMMA allows legislators to change some sections of the amendment at a later date with a two-thirds vote. Sections legalizing medical use of marijuana and the number of dispensaries and cultivation facilities cannot be changed by legislative vote. Ark. Const. amend. XCVIII, § 23. During the 2017 session, the Arkansas Legislature passed 25 acts concerning medical marijuana. Future sessions will likely continue to change the law, so before any decision is made consult with your city attorney to ensure you have the most up-to-date information.

With all this in mind, let’s look at the two questions posed by concerned municipalities.

What can I do as an employer?

Generally speaking, an employer, including municipalities, cannot discriminate against employees or job applicants based upon whether that person is, or was, a “qualifying patient or designated caregiver.” Ark. Const. amend. XCVIII, § 3. Ark. Const. amend. XCVIII, § 3(f)(3)(B)(i) allows employers to establish and implement substance abuse or drug-free workplace policies. These policies can include drug testing programs complying with state or federal law. Keep in mind that AMMA does not permit a person to possess, smoke, or otherwise engage in the use of marijuana in a public place and does not permit a person to smoke marijuana where the smoking of tobacco is prohibited by law. Ark. Const. amend. XCVIII, § 6.

Additionally, employers can take action based upon a “good faith belief” that an applicant or employee used or possessed marijuana on the employer’s premises while working, or was under the influence of marijuana during work hours (a positive drug test cannot be the sole basis of the employer’s good faith belief). Ark. Const. amend. XCVIII, § 3. Finally, employers can exclude a qualifying patient from “safety sensitive” positions based upon a good faith belief that the qualifying patient is currently using marijuana. Ark. Const. amend. XCVIII, § 3.

How should we zone facilities associated with medical marijuana?

Zoning regulations for medical marijuana dispensaries or cultivation facilities must be the same as those for a licensed retail pharmacy. Therefore, municipalities may restrict where dispensaries and cultivation facilities are located only if the zoning is reasonable and treats the facilities as if they are licensed retail pharmacies. Ark. Const. amend. XCVIII, § 14.

In addition to municipal zoning laws, AMMA places the following location restrictions on dispensaries and cultivation facilities:

“(i)(a) Dispensary, the location of which may not be within one thousand five hundred feet (1,500’) of a public or private school, church, or daycare center, or facility for individuals with developmental disabilities existing before the date of the dispensary application, which shall be calculated from the primary entrance of the dispensary to the nearest property boundary of a public or private school, church, or daycare center, or facility for individuals with developmental disabilities.

(b) Subdivision (g)(2)(C)(i)(a) of this section does not apply to or impact existing locations of dispensaries issued a license before the effective date of this subdivision (g)(2)(C)(i)(b) that may be located within one thousand five hundred feet (1,500’) of a facility for individuals with developmental disabilities; or (ii) Cultivation facility, the location of which may not be within three thousand feet (3,000’) of a public or private school, church, or daycare center existing before the date of the cultivation facility application, which shall be calculated from the primary entrance of the cultivation facility to the nearest property boundary of a public or private school, church, or daycare center[.]” Ark. Const. amend. XCVIII, § 8.

Finally, AMMA allows for a municipality to prohibit the operation of any dispensaries or cultivation facilities via a referendum or initiative under Art. 5, § 1 of the Arkansas Constitution. Ark. Const. amend. XCVIII, § 14. If your municipality is especially concerned about this issue, it can be put on the ballot for popular vote.

As the state of Arkansas implements regulations or changes to the law, this educational document will be updated.



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("AMMA")*