No. 125443

In the Supreme Court of Illinois

MEDPONICS ILLINOIS, LLC, an Illinois Limited Liability Company,

Plaintiff-Appellant,

v.

ILLINOIS DEPARTMENT OF AGRICULTURE, RAYMOND POE, Director of the Illinois Department of Agriculture, JACK CAMPBELL, Chief of the Bureau of Medicinal Plants of the Illinois Department of Agriculture, and CURATIVE HEALTH CULTIVATION, LLC, an Illinois Limited Liability Company,

Defendants-Appellees.

Appeals from the Appellate Court of Illinois,
Second Judicial District, Case Nos. 2-17-0977, 2-18-0013 & 2-18-0014 (consolidated).
The Honorable **Michael J. Fusz**, Judge Presiding.

BRIEF AND APPENDIX OF APPELLANT

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POINTS AND AUTHORITIES

Nature of the Action

The Compassionate Use of Medical Cannabis Pilot Program Act ("the Act"), 410 ILCS 130/1, *et seq.*, requires that a medical cannabis cultivation center "may not be located within 2,500 feet of *** an area zoned for residential use." 410 ILCS 130/105(c) (A64). Although the Act does not define "area zoned for residential use," 410 ILCS 130/10, the Illinois Department of Agriculture's administrative rules governing its enforcement of the Act define the phrase as "area zoned **exclusively** for residential use." 8 Ill. Adm. Code 1000.10 (A66) (emphasis added).

Plaintiff-appellant Medponics Illinois, LLC ("Medponics") and defendant-appellee Curative Health Cultivation, LLC ("Curative") applied for the same medical cannabis cultivation center permit. (C2050 at ¶25; C2051 at ¶36) Medponics' proposed cultivation center location is property in Zion which is more than 2,500 feet away from any area zoned exclusively for residential use. (C2694, C2698, C2749) Curative's proposed cultivation center location is property in Aurora which is less than 2,500 feet away from the R-1 and R-5 districts, which are both zoned exclusively for residential use pursuant to the Aurora Zoning Ordinance. (A87-A91)

Defendants-appellees Illinois Department of Agriculture, Raymond Poe, director of the Illinois Department of Agriculture, and Jeffrey Cox, chief of the Bureau of Medicinal Plants of the Illinois Department of Agriculture (collectively "IDOA") awarded the permit to Curative. (C3731-C3732) Medponics challenged this finding on administrative review, asserting that the location of Curative's proposed cultivation center did not comply with the Act because it was located too close to two areas zoned exclusively for residential use. (C2045-C2456) IDOA and Curative responded that Aurora's R-1 and R-5 zoning districts are not zoned exclusively for residential use

because the Aurora Zoning Ordinance allows special use permits for non-residential uses, such as parks and churches, in those districts. (C2548-C2580, C2583-C2635) The circuit court rejected their position, and found that IDOA's permit award to Curative was clearly erroneous. (A24-A26) The appellate court reversed and ordered the permit returned to Curative, reasoning that judicial deference to IDOA's interpretation of the Act and its rule was required because, although Medponics' position was "reasonable," IDOA's position was not "clearly erroneous." (A18-A19, ¶¶35-36)

No questions are raised on the pleadings.

Jurisdictional Statement

IDOA awarded the cultivation center permit at issue to Curative on October 30, 2015. (C3731-C3732) Pursuant to the Act at 410 ILCS 130/155, this award was an administrative decision reviewable under the Administrative Review Law. The Administrative Review Law requires that a complaint for administrative review be filed within 35 days of the agency decision for which review is sought. 735 ILCS 5/3-103. Medponics timely filed its complaint for administrative review on December 3, 2015. (C11)

The circuit court entered its final order on November 30, 2017. (A27-A28) Curative filed its notice of appeal on December 22, 2017 (C5494-C5496), and IDOA filed its notice of appeal January 2, 2018 (C5514-C5515). Both notices of appeal were timely pursuant to Rule 303(a)(1). The appellate court issued its order on October 7, 2019. (A1) Medponics did not file a petition for rehearing.

By operation of Rule 315(b)(1), Medponics' petition for leave to appeal to this Court was originally due on November 12, 2019.[1] On November 5, 2019, Medponics moved this Court for an extension of time to December 27, 2019 to file its petition for leave to appeal. The motion was granted on November 13, 2019, and Medponics filed its petition for leave to appeal on December 23, 2020. This Court granted the petition for leave to appeal on March 25, 2020.

Statement of the Issue Presented for Review

The Act requires that a medical cannabis cultivation center be located more than 2,500 feet away from an "area zoned for residential use." 410 ICLS 130/105(c) (A64). The Act does not define "area zoned for residential use," 410 ILCS 130/10, but IDOA's administrative rules governing its enforcement of the Act define "area zoned for residential use" as "area zoned **exclusively** for residential use." 8 Ill. Adm. Code 1000.10 (A66) (emphasis added). The issue presented is whether an area zoned exclusively for residential use under the applicable zoning ordinance is also zoned exclusively for residential use for purposes of the Act's cultivation center location requirement where the zoning ordinance allows special use permits for non-residential uses in that area.

Statute, Administrative Rules, and Ordinance Involved

(1) The following provisions of the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/1 *et seq.* (text in the appendix to this brief at A59-A65):

410 ILCS 130/10 – Definitions

410 ILCS 130/15 – Authority

[1] Medponics' petition for leave to appeal was technically due on November 11, 2019. Because November 11, 2019 was Veteran's Day and a court holiday, the petition for leave to appeal was due on November 12, 2019. *See*, 5 ILCS 70/1.11.

410 ILCS 130/85 – Issuance and Denial of Medical Cannabis Cultivation Permit

410 ILCS 130/105(c) – Requirements; Prohibitions; Penalties for Cultivation Centers

(2) The following provisions of the Illinois Administrative Code, 8 Ill. Adm. Code 1000.1, *et seq*. (text in the appendix to this brief at A66-A86):

8 Ill. Adm. Code 1000.10 – Definitions

8 Ill. Adm. Code 1000.100(d)(17), (d)(19) – Permit Application

8 Ill. Adm. Code 1000.110(f) – Permits-Selection Criteria

(3) The following provisions of the 2015 City of Aurora Zoning Ordinance (text in the appendix to this brief at A87-A91)[2]:

Section 3.3 – Definition of "Residential Area"

Section 4.1 – Use Districts

Section 7.5-2.1 – R-1 Residential District

Section 7.10-2.1 – R-5 Residential District

Statement of Facts

I. The Compassionate Use of Medical Cannabis Pilot Program Act.

A. The Act's purpose.

Effective January 1, 2014, the Compassionate Use of Medical Cannabis Pilot Program Act recognizes that "[m]odern medical research has confirmed the beneficial uses of cannabis" in treating or alleviating pain and other symptoms associated with a variety of medical ailments. 410 ILCS 130/1(a), 130/999. The Act's purpose is thus "to

[2] This was the Aurora Zoning Ordinance in effect when IDOA issued the permit to Curative. The 2020 Aurora Zoning Ordinance is publicly available on the City of Aurora's website, aurora-il.org/1425/zoning. The 2015 provisions cited and discussed in this brief are contained in the 2020 ordinance verbatim.

protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties, and property forfeiture if the patients engage in the medical use of cannabis." 410 ILCS 130/1(g). The Act similarly provides that dispensaries, cultivation centers, and their agents are not subject to arrest, prosecution, civil penalties or disciplinary action for the dispensation or cultivation of medical cannabis. 410 ILCS 130/25 (i), (g), (h).

B. IDOA's administrative rules.

The Act's provisions relating to the registration and oversight of cultivation centers are enforced by IDOA. 410 ILCS 130/15(b) (A59). In this regard, the Act directed IDOA to develop administrative rules "in accordance to [its] responsibilities under this Act." 410 ILCS 130/165(a). IDOA's administrative rules are found at 8 Ill. Adm. Code 1000.1, *et seq.*

C. Registration of cultivation centers.

The Act defines a medical cannabis cultivation center as "a facility operated by an organization or business that is registered by the Department of Agriculture to perform necessary activities to provide only registered medical cannabis dispensing organizations with usable medical cannabis." 410 ILCS 130/10(e). IDOA may register up to 22 cultivation centers, one for each Illinois State Police district. 410 ILCS 130/85(a) (A61).

D. Cultivation centers must be located more than 2,500 feet away from any area zoned "exclusively for residential use."

The Act requires that cultivation centers be located more than 2,500 feet away from any area zoned for residential use:

> (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**. 410 ILCS 130/105(c) (A64) (emphasis added).

Although the Act does not define "an area zoned for residential use," 410 ILCS 130/10, the Rules define the phrase as "an area zoned exclusively for residential use":

> **1000.10 Definitions and Incorporations**
>
> Definitions for this Part can be located in Section 10 of the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130/10]. The following definitions shall also apply to this Part: ***
>
> **"Area zoned for residential use" means an area zoned exclusively for residential use**; provided that, in municipalities with a population over 2,000,000 people, 'an area zoned for residential use' means an area zoned as a residential district or a residential planned development. 8 Ill. Adm. Code 1000.10 (A66) (emphasis added).

Because of this location requirement, an application for a cultivation center permit must include the proposed physical address of the cultivation center and a copy of the current local zoning ordinance with verification that the proposed cultivation center is in compliance with the local zoning rules. 410 ILCS 130/85(d)(2), (d)(11) (A61-A62); 8 Ill. Adm. Code 1000.100(d)(2) (A76); 8 Ill. Adm. Code 1000.100(d)(17) (A78). The application must also include "[a] location area map of the area surrounding the proposed cultivation center. The map must clearly demonstrate that the proposed cultivation center is not located within 2,500 feet of...an area zoned for residential use." 8 Ill. Adm. Code 1000.100(d)(19) (A79) (emphasis added).

E. The permit scoring process.

All applications which fully comply with the requirements set out in the Act and the Rules are judged in a competitive scoring system pursuant to the criteria set out in the Rules at 8 Ill. Adm. Code 1000.110 (A81-A86). Each cultivation center permit is to be

awarded to the highest scoring qualified applicant in each Illinois State Police district. 8 Ill. Adm. Code 1000.110(f)(1) (A85).

II. The cultivation center permit applications at issue.

A. Medponics' proposed location is more than 2,500 feet away from any area zoned exclusively for residential use.

On September 22, 2014, Medponics submitted its application for the Illinois State Police District 2 cultivation center permit in compliance with all requirements of the Act and the Rules. (C2050 at ¶¶25, 30-33) Medponics sought to operate its cultivation center at 2809 Damascus Avenue in Zion. (C2694) The property is in an area zoned "industrial" (C2749) and is more than 2,500 feet from any area zoned exclusively for residential use. (C2694, C2698)

B. Curative's proposed location is less than 2,500 feet from two areas zoned exclusively for residential use.

Also in September 2014, Curative and eight other applicants submitted applications for the District 2 cultivation center permit. (C2051 at ¶36) Curative sought to operate its cultivation center at 2229 Diehl Road in Aurora, an area zoned M2-S ("Manufacturing-General Zoning") and located closer than 2,500 feet to the R-1 and R-5 zoning districts in Aurora. (C2052 at ¶39, C5226-C5228) Pursuant to the Aurora Zoning Ordinance, the R-1 and R-5 zoning districts are "residential districts." (A89) The R-1 district is a "One-Family Dwelling District" and the R-5 district is a "Multiple-Family Dwelling District." (A89) The Aurora Zoning Ordinance defines "dwelling" in pertinent part as "[a] building or portion thereof...designed or used **exclusively** for residential occupancy" (A87; emphasis added) and "residential area" as "[a] zoning lot or portion of

a zoning lot designed or used **exclusively for residential purposes**" (A88; emphasis added).

III. IDOA awards the District 2 permit to Curative and the circuit court finds the award to be clearly erroneous.

A. Curative is awarded the District 2 permit.

On October 30, 2015, IDOA awarded the District 2 permit to Curative (C3731-C3732) and notified Medponics that its permit application was denied (C2063).

B. Medponics' complaint for administrative review.

Medponics filed its original verified complaint for administrative review on December 3, 2015 (C11-C793), its verified first amended complaint on March 24, 2016 (C937-C1720), and its verified second amended complaint on February 24, 2017 (C2045-C2456). The record reflects that Medponics is the only District 2 applicant that challenged the permit award to Curative.

All parties briefed the verified second amended complaint. (C2484-C2494, C2548-C2580, C2583-C2635) Medponics argued that Curative's application should be disqualified because Curative's proposed cultivation center does not comply with the Act's location requirement in that it is less than 2,500 feet away from two areas zoned exclusively for residential use. (C2060, C2484-2494, 2054) IDOA and Curative opposed the verified second amended complaint, arguing that Aurora's R-1 and R-5 zoning districts are not zoned exclusively for residential use because the Aurora Zoning Ordinance allows special use permits for non-residential uses, such as parks and churches, in those districts. (C2548-C2580, C2583-C2635)

C. The circuit court finds IDOA's permit award to Curative to be clearly erroneous.

In its order of August 24, 2017, the circuit court held that IDOA and Curative incorrectly interpreted the Act's cultivation center location requirement and the definition of "area zoned for residential use" in the Rules because the availability of special use permits for non-residential uses in Aurora's R-1 and R-5 districts does not change their zoning designation of "exclusively for residential purposes":

> [T]his Court finds that, as a matter of mixed law and fact, that the State and Curative's interpretation and application of the statute and IDOA's own rules, to the extent they believe the setback rule only applies to areas where **nothing** but residences are permitted is clearly erroneous.
>
> The rule itself defines an "Area zoned for residential use" as "an area exclusively zoned for residential use." All parties agree the Curative site is within 2,500 feet of the R-1 and R-5 areas zoned for residential use. The City of Aurora has defined R-1 and R-5 as exclusively residential and simply because it allows special uses and special use permits, the areas are still "zoned exclusively for residential purposes" even though the designation permits certain special uses. These areas remain exclusively residential, and by the very terms of the IDOA's rule, the Curative facility could not be within 2,500 feet of areas zoned as exclusively residential.
>
> Neither the Act nor the Rule states "areas zoned for residential use, unless there is a special use allowed." Curative and IDOA's position is illogical and does not fit the plain meaning of the statute nor does [sic] is it consistent with the purpose of the setback provision in the statute and the rules. The mere fact that hospitals, cemeteries, etc. may be granted special use permits in the "exclusively residential use" zones does not take these areas out of the purview of the Act or the rules. (A.25; emphasis in original)

The circuit court accordingly found that, because Aurora's R-1 and R-5 zoning districts are "areas zoned exclusively for residential use," the site of Curative's proposed

cultivation center violated the Act's location requirement and IDOA's award of the District 2 permit to Curative was clearly erroneous:

> [A]warding Curative the license for the site was improper, and violates both the statute and IDOA's own rules as R-1 and R-5 are "areas zoned exclusively for residential use." The award of the license to Curative is therefore clearly erroneous; the court has the definite and firm conviction that a mistake has been made. (A25)

The circuit court acknowledged that Medponics was the only applicant that challenged the permit to Curative, but concluded that, with Curative disqualified, "this case is to be remanded for rescoring and re-evaluation of the qualifications of all of the applicants by the IDOA as well as a reassessment of the award in District 2":

> The Court finds that it does not necessarily follow that because Curative does not qualify for the license that Medponics is to be awarded the license, although the Court acknowledges that the time and expense expended by Medponics was instrumental in bringing this action. Rule 8 IL ADC 1000.40(d) specifically indicates that, in case an awardee forfeits a permit, the permit shall be awarded to the next qualified applicant in terms of points. While there is no "forfeiture" per se, to the extent Curative is disqualified, this case is to be remanded for rescoring and re-evaluation of the qualifications of all of the applicants by the IDOA as well as a reassessment of the award in District 2.
>
> Since the Court has no evidence as to whether the other applicants' proposed locations are located within 2500 feet of an area zoned exclusively for residential use, the Court orders that IDOA follow the Court's above interpretation of the setback rule and orders the IDOA to reorder and reassess the applications of all applicants based on the 2,500 foot setback.
>
> The Court is not directing IDOA to award the license to any applicant. But if there is a qualified applicant after rescoring, the IDOA may award the license or permit to that applicant, if appropriate, following the IDOA's review and scoring criteria. (A25-A26)

The circuit court ordered IDOA and Curative to file a sealed and redacted version of the administrative record and stated that it would enter an order rendering the August 24, 2017 order final and appealable once this was done. (A26)

D. The circuit court's order becomes final.

The administrative record was filed and on November 30, 2017, the circuit court entered an order rendering its August 24, 2017 order final and appealable. (A27-A28) In the same order, the circuit court also stayed enforcement of the August 24, 2017 order pursuant to Rule 305(b), finding a stay to be "equitable and just, without a bond from any party" because the order "presents an issue of first impression concerning an important setback issue pursuant to the provisions of [the Act] and the rules of the IDOA implementing the Act, which may have far-reaching effects on the siting of cultivation centers across the state." (A28) This appeal ensued. (C5483-C5493, C5514-C5515)[3]

IV. The appellate court's order.

On October 7, 2019, the appellate court reversed the circuit court's administrative review findings and order. (A1-A23) The appellate court affirmed IDOA's decision to

[3] On February 28, 2018, Medponics filed a motion in the circuit court to supplement the record on appeal. (Supp C22-Supp C243) Medponics filed the motion after it became aware of the results of several FOIA requests made by the City of Zion and directed to Aurora, IDOA, and the Illinois Attorney General. (Supp C23) The FOIA responses included correspondence dated before and after the issuance of the permit to Curative from numerous Aurora residents, aldermen, and DuPage County Board members to Aurora, Curative, and IDOA opposing the issuance of the permit to Curative based upon the fact that Curative's proposed cultivation center was less than 2,500 feet away from two areas zoned exclusively residential. (Supp 69-Supp C243) Medponics argued that the record should be supplemented pursuant to Rule 3.3 of the Illinois Rules of Professional Conduct governing candor to the tribunal because these materials were not previously provided to the circuit court by Curative, Aurora, or IDOA. (Supp C23-Supp C24) The circuit court denied the motion on the ground that it had no authority to supplement the record on appeal with materials that were not considered by it in the first instance. (Supp C245) Medponics did not appeal this order.

award the permit to Curative, reasoning that an area zoned exclusively for residential use under the applicable zoning ordinance is not zoned exclusively for residential use under the Act where the zoning ordinance allows special use permits for non-residential uses:

> The plain language of the IDOA rules intends to prohibit cultivation centers within 2,500 feet of areas zoned "exclusively" for residential use. 8 IL ADC 1000.10. The term "exclusively" does not present ambiguity. The term "exclusively" is defined as "apart from all others," "solely," and "to the exclusion of all others." See Oxford Online Dictionary, [citation omitted].
>
> Although Curative's proposed cultivation center is located within 2,500 feet of the R-1 and R-5 zoning districts in Aurora, the record reflects that these areas are not exclusively residential. The [Aurora Zoning Ordinance] reflects areas R-1 and R-5 as having a litany of special and accessory uses other than residential. (A17, ¶¶32-33)
>
> * * *
>
> The [Aurora Zoning Ordinance] clearly zoned districts R-1 and R-5 as residential. However, the many other allowed uses in these areas make clear that they are zoned for non-residential special uses as well. In short, they are not "exclusively" residential. (A18, ¶35)

Additional pertinent facts are discussed in the Argument, *infra*, in order to avoid duplication.

Preliminary Statement

This point must be made upfront: the Act's cultivation center location requirement is not ambiguous.

The appellate court found that Medponics' interpretation of "area zoned exclusively for residential use," summarized above in the Statement of Facts and discussed in greater detail below, was "reasonable," but rejected it on the ground that deference to IDOA's position was required because the Act's cultivation center requirement was ambiguous:

> Medponics argues that the R-1 and R-5 districts remain zoned exclusively for residential use in the [Aurora Zoning Ordinance] even when non-residential uses are allowed. While this may be a reasonable interpretation, it does not make the IDOA's interpretation of its own regulations clearly erroneous, arbitrary, or unreasonable. "If reasonable readers of a statute could differ over the extent of the regulatory authority it confers, we defer to the agency's interpretation if the interpretation is defensible." *Quality Saw and Seal, Inc. v. Illinois Commerce Commission*, 374 Ill. App. 3d 776, 782 (2007). That rule holds true even if the agency only recently arrived at the interpretation. *Id.* (A18-A19, ¶35)

The appellate court's holding is incorrect because the Act's location requirement for cultivation centers is not ambiguous.

Where, as here, an agency is charged with the administration and enforcement of a statute, courts will give deference to the agency's interpretation of its own rule or regulation under the statute only if (1) the relevant statutory language is ambiguous, and (2) the agency's interpretation is not clearly erroneous, arbitrary, or unreasonable. *See, e.g., Sykes v. Schmitz*, 2019 IL App (1st) 180458, ¶34; *Dusty's Outdoor Media, LLC v. Department of Transportation*, 2019 IL App (5th) 180269, ¶11; *Board of Trustees of University of Illinois v. Illinois Education Labor Relations Board*, 2012 IL App (4th) 110836, ¶24. Statutory ambiguity is "a prerequisite: we do not defer to an agency's interpretation unless the statute is ambiguous. If the legislative intent is clear, that is the end of the matter." *Quality Saw and Seal, Inc. v. Illinois Commerce Commission*, 374 Ill. App. 3d 778, 782 (2d Dist. 2007).

Because the court does not defer to the agency's interpretation of a statutory provision unless it finds the statutory language ambiguous, the starting point is the statute itself. *Sykes*, 2019 IL App (1st) 180458, ¶¶11, 34. A statute will be deemed ambiguous only if it is "capable of being understood by reasonably well-informed persons in two or

more different ways." *People v. Marshall*, 242 Ill. 2d 285, 292 (2011). A statute is not ambiguous merely because a term or phrase is undefined. *Metropolitan Life Ins. Co. v. Hamer*, 2013 IL 114234, ¶20. To the contrary, when a phrase is undefined, the court presumes that the legislature intended the phrase to have its popularly understood meaning, and the court "may employ a dictionary" to ascertain this meaning. *Id.; see also, Dusty's Outdoor Media*, 2019 IL App (5th) 180269, ¶9; *Poris v. Lake Holiday Property Owners Association*, 2013 IL 113907, ¶48.

Here, the Act's location requirement for cultivation centers states in pertinent part as follows: "A registered cultivation center may not be located within 2,500 feet of...an area zoned for residential use." 410 ILCS 130/105(c). Although the phrase "area zoned for residential use" is undefined by the Act, these words are not ambiguous to "reasonably well-informed persons." *Quality Saw and Seal*, 374 Ill. App. 3d at 782. "Area" means "a particular extent of space or surface or one serving a special function such as...a geographic region." *See*, merriam-webster.com/dictionary/area, last visited May 28, 2020. To "zone" means "to arrange in or mark off into zones, specifically: to partition (a city, borough, or township) by ordinance into sections reserved for different purposes (such as residence or business)." *See*, merriam-webster.com/dictionary/zone, last visited May 28, 2020. And "residential" means "used as a residence or by residents" or "restricted to or occupied by residences, a residential neighborhood." *See*, merriam-webster.com/dictionary/residential, last visited May 28, 2020.[4]

[4] Medponics acknowledges that the words "area," "zone," and "residential" have multiple other dictionary definitions. This fact does not render the statutory language ambiguous "because statutory ambiguity is not merely a matter of definitional possibilities: rather it is a question of statutory context." *Dusty's Outdoor Media*, 2019 IL App (5th) 180269, ¶14 (quotation marks and citation omitted). The definitions set out here are the only ones

Applying the foregoing popularly understood definitions, the Act's cultivation center location requirement is unambiguous and means what it says: the legislature intended that cultivation centers be located more than 2,500 feet away from areas where people live as demarcated by the applicable zoning ordinance. Because the pertinent statutory language is unambiguous, the appellate court erred in deferring to IDOA's administrative interpretation of it.

Argument

I. The standard of review is *de novo*.

In administrative review cases, this Court reviews the decision of the agency and not the decision of the circuit or appellate court. *See, e.g., AFM Messenger Service, Inc. v. Department of Employment Security,* 198 Ill. 2d 380, 390 (2001). Here, the Act provides that judicial review of a decision of IDOA is governed by the Administrative Review Law. 410 ILCS 130/155. Under the Administrative Review Law, the scope of judicial review extends to all questions of law and fact presented by the record before the court. 735 ILCS 5/3-110; *see also, AFM Messenger Service,* 198 Ill. 2d at 390.

"The applicable standard of review, which determines the degree of deference given to the agency's decision, depends on whether the question presented is one of fact, one of law, or a mixed question of law and fact." *AFM Messenger Service,* 198 Ill. 2d at 390; *see also, Doe Three v. Department of Public Health*, 2017 IL App (1st) 162548, ¶25. If the question presented is one of fact, the agency's factual findings "are considered to be *prima facie* correct" and will be reversed only if they are against the manifest weight of the evidence. *Doe Three*, 2017 IL App (1st) 162548, ¶25. Questions of law are

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which "make[] sense within the context of the statute" and so are the definitions which should be relied upon by this Court. *Id.*

reviewed *de novo*, and mixed questions of law and fact are reviewed under the clearly erroneous standard. *Id.*; *see also*, *Village of Oak Brook v. Sheahan*, 2015 IL App (2d) 140810, ¶ 29.

The circuit court here concluded that IDOA's decision to award the District 2 cultivation center permit to Curative was a mixed question of law and fact, but this was incorrect. (A25) A mixed question of law and fact is a question "in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated." *AFM Messenger Service, Inc.*, 198 Ill. 2d at 391; *see also*, *Village of Oak Brook*, 2015 IL App (2d) 140810, ¶29. Although the facts here are undisputed, the rule of law is not. The parties dispute whether an area is zoned exclusively for residential use for purposes of the Act's cultivation center location requirement where it is in fact zoned exclusively for residential use but special use permits for non-residential uses are allowed. This presents a question of law and so is reviewed *de novo*. *AFM Messenger Service, Inc.*, 198 Ill. 2d at 390; *Village of Oak Brook*, 2015 IL App (2d) 140810, ¶30. The appellate court agreed. (A15-A16, ¶¶26-28)

II. The location of Curative's proposed cultivation center is too close to two areas zoned exclusively for residential use.

The rules of statutory construction apply to municipal ordinances like the Aurora Zoning Ordinance. *LeComte v. Zoning Board of Appeals for Barrington Hills*, 2011 IL App (1st) 100423, ¶22 (Neville, J.). When a court construes a zoning ordinance, its task is to ascertain and give effect to the intent of the drafters. *Id.* The best indication of the drafters' intent is the ordinance language, which is to be given its plain and ordinary meaning. *Id.* When a zoning ordinance defines specific terms, "those definitions, when

reasonable, will be sustained to the exclusion of hypothetical indulgences." *Id.*, ¶27. Terms which are undefined are to be given their "ordinary and popularly understood meaning," which the court may derive by looking to dictionary definitions "without rendering the term ambiguous." *Id.*, ¶29 (citation omitted).

The Aurora Zoning Ordinance divides the city into zoning "use districts." (A89) The R-1 and R-5 districts are zoned as "residential districts." (A89) The R-1 district is a "One-Family Dwelling District" (A89), and its intent and purpose is "to provide the City of Aurora with a wide range of quality housing opportunities by providing single-family areas of a low-density character containing a minimum lot area of ten thousand (10,000) square feet." (A90) The R-5 district is a "Multiple-Family Dwelling District" (A89), and its intent and purpose is "to allow for quality rental type dwelling units within developments that establish and maintain a safe and secure living environment." (A91) The Ordinance defines "dwelling" as "[a] building or portion thereof, but not including a house trailer or mobile home, **designed or used exclusively for residential occupancy**, including one-family dwelling units, two-family dwelling units and multiple-family dwelling units, but not including hotels, boardinghouses or lodging houses." (A87; emphasis added)

The Ordinance does not define "residential district," but it does define "residential area": "[a] zoning lot or portion of a zoning lot designed or used **exclusively** for residential purposes." (A88; emphasis added) The ordinary and popularly understood meanings of "district" and "area," particularly when considered within the context of the intent and purpose of the R-1 and R-5 districts, establish that the R-1 and R-5 "residential districts" are also "residential areas" under the Ordinance. "District" means "an **area**,

region, or section with a distinguishing characteristic, // a shopping district." *See*, merriam-webster.com/dictionary/district, last visited May 28, 2020 (emphasis added). And "area," as discussed *supra*, means "a particular extent of space or surface or one serving a special function such as...a geographic region." *See*, merriam-webster.com/dictionary/area, last visited May 28, 2020. Pursuant to these definitions, the words "district" and "area" mean the same thing and are thus interchangeable. Aurora's R-1 and R-5 "residential districts" are accordingly "residential areas," which the Ordinance states are "used exclusively for residential purposes." (A88)

As discussed throughout, the Act requires that cultivation centers be located more than 2,500 feet away from any "area zoned for residential use." 410 ILCS 130/105(c) (A64). The Act does not define the phrase "area zoned for residential use," but the Rules do: "'Area zoned for residential use' means an area zoned **exclusively** for residential use." 8 Ill. Adm. Code 1000.10 (A66) (emphasis added). It is undisputed that the location of Curative's proposed cultivation center is less than 2,500 feet away from Aurora's R-1 and R-5 zoning districts, both of which are zoned exclusively for residential use under the Ordinance. The location of Curative's proposed cultivation center thus violates the Act's location requirement and IDOA's rule administering that requirement.

III. IDOA's interpretation of "area zoned exclusively for residential use" impermissibly treats special use permits as zoning amendments.

A. Illinois law is established: a special use permit is not a zoning amendment.

IDOA and Curative argued below that Aurora's R-1 and R-5 zoning districts are not areas zoned exclusively for residential use because the Aurora Zoning Ordinance allows the issuance of special use permits for non-residential uses, such as parks and churches, within these districts. (C2548-C2580, C2583-C2635) IDOA and Curative thus

maintain that the availability of special use permits within these districts changes their zoning designations to something other than exclusively residential. This interpretation is contrary to the law because it is established that the availability of special use permits within a particular zoning district does not change that district's zoning designation. Simply stated, special use permits do not function as zoning amendments.

A zoning amendment changes or alters the original zoning ordinance or some of its provisions. *Jones v. City of Carbondale*, 217 Ill. App. 3d 85, 89 (5th Dist. 1991); S. Connor, *Zoning*, MUNICIPAL LAW & PRACTICE, §13.19 (Ill. Inst. for Cont. Legal Educ. 2000). By contrast, a special use is "a type of property use that is expressly permitted **within a zoning district** by the controlling zoning ordinance so long as the use meets certain criteria or conditions." *City of Chicago Heights v. Living Word Outreach Full Gospel Church and Ministries, Inc.*, 196 Ill. 2d 1, 16 (2001) (emphasis added). "The purpose of special uses is to provide for those uses that are either necessary or generally appropriate for a community but may require special regulation because of unique or unusual impacts associated with them." *Id.* (citation omitted); *see also, Shipp v. County of Kankakee*, 345 Ill. App. 3d 250, 253 (3d Dist. 2003); S. Connor, *Zoning*, §13.17.[5]

Churches are a good example of the special use. While a church may be "generally appropriate" for location in a district zoned exclusively residential, "depending upon its size or location, it may create traffic or parking problems within the

[5]The third mechanism typically provided in zoning ordinances "to accommodate circumstances for which the generalized ordinance regulatory scheme is imperfect" is the variance. *Jones,* 217 Ill. App. 3d at 89; S. Connor, *Zoning*, §10.16. A variance extends authority to a specific property owner to use his or her property in a manner specifically forbidden by the zoning ordinance and is usually based on a showing of hardship. S. Connor, *Zoning*, §13.18.

neighborhood in which it is located." *City of Chicago Heights*, 196 Ill. 2d at 16. A municipality may therefore classify it as a special use in such a zoning district and "require, for example, that parking problems be resolved before granting a special use permit to a property owner that would allow the owner to use the property as a church." *Id.* at 16-17 (citations omitted).

Illinois law is long-established that special uses do not change the zoning designation of the district in which they are located:

> **A special use is one which may be created in an existing zoning district without changing the underlying zoning classification and without changing the zoning map.** It can be issued for certain periods of time and under certain restrictions which allow the municipal or county authorities the opportunity to maintain a certain degree of control of the special use. **It does not change the underlying zoning classification or the zoning map.**

Consumers Illinois Water Co. v. County of Will, 220 Ill. App. 3d 93, 96 (3d Dist. 1991) (emphasis added) (rejecting the argument that the issuance of a special use permit for a wastewater treatment plant on land zoned as "countryside areas and productive farmland" was "tantamount to a change in the zoning map"); *Jones*, 217 Ill. App. 3d at 91 (the issuance of a special use permit does not "change or alter" the zoning designation of the district in which the special use is granted).

County of Cook v. Monat, 365 Ill. App 3d 167 (1st Dist. 2006), is illustrative. There, Cook County alleged that defendants violated the zoning ordinance by keeping two horses on their property. *Id.* at 168. Defendants argued that the property's previous owner had been granted a special use permit to keep horses, and that this special use permit "amended the zoning map." *Id.* at 173-174. The appellate court affirmed summary judgment for Cook County, reasoning that "a special use...differs from a zoning

amendment, which changes or alters the original ordinance or some of its provisions. Although a special use authorizes use of property contrary to the [zoning] ordinance, it is not the equivalent of a zoning amendment....To the contrary, our courts have held that a special use permit does not change the zoning map, nor does a map designation of a permitted special use amend the zoning ordinance." *Id.* at 175-176.

B. The availability of special use permits for non-residential uses in Aurora's R-1 and R-5 districts does not change their zoning designation of exclusively residential.

Because the availability of special use permits in a particular zoning district does not change that district's zoning classification, Aurora's R-1 and R-5 districts remain exclusively residential zoning districts. Indeed, the circuit court below specifically recognized this in setting aside the permit award to Curative:

> The rule itself defines an "Area zoned for residential use" as "an area exclusively zoned for residential use." All parties agree the Curative site is within 2,500 feet of the R-1 and R-5 areas zoned for residential use. The City of Aurora has defined R-1 and R-5 as exclusively residential and simply because it allows special uses and special use permits, the areas are still "zoned exclusively for residential purposes[.]" (A25)

IDOA's interpretation of the phrase "zoned exclusively for residential use" in 8 Ill. Adm. Code 1000.10 as meaning "zoned exclusively for residential use with no special use permits allowed" – that is, as a zoning amendment – thus has no basis in the law and cannot stand.

C. The appellate court erred in relying upon materials outside the administrative record to reach its decision on this issue.

Under the Administrative Review Law, the scope of judicial review extends to "all questions of law and fact presented by the entire record before the court." 735 ILCS

5/3-110. Here, the appellate court erroneously relied upon two items that were not included in the administrative record in deferring to IDOA on the "special use" issue.

The first of these two items is a letter from the City of Aurora to IDOA dated April 29, 2015. (A29-A30) In the letter, Aurora advised IDOA of its position that Curative's proposed cultivation center was not located within 2,500 feet of areas zoned exclusively for residential use for purposes of the Act because Aurora's zoning ordinance allows special use permits to be granted allowing for "other uses" in the R-1 and R-5 zoning districts. (A29-A30)

On September 13, 2017, approximately three weeks after the circuit court's order setting aside the permit award to Curative, Curative filed a motion to supplement the administrative record with this letter. (C5256-C5272) In the motion, which IDOA joined, Curative's counsel stated that (1) he found the letter after the August 24, 2017 administrative review hearing; (2) the letter pre-dates IDOA's October 30, 2015 award of the District 2 cultivation center permit to Curative; and (3) because the letter pre-dates the permit award, "it was clearly considered as part of the application process." (C5258) The motion was fully briefed – Medponics opposed it – and argued before the circuit court. (C5256-C5272, C5324-C5329, C5421-C5425, R122-R126, C5435)

On November 3, 2017, the circuit court denied Curative's motion on the ground that Curative did not present any evidence showing that the letter was in fact considered by IDOA in its cultivation permit decision (C5435):

> THE COURT: What evidence do you have that this letter was ever considered by the Department in granting the permit?
>
> MR. MORAN [Curative's counsel]: Because they joined our motion to ask that the order be supplemented with it as evidence that they considered. (R123-R124)

* * *

> MR. MORAN: It had to be [considered by IDOA] because the permit wasn't issued until the end of October six months later.
>
> THE COURT: Just because the permit was issued six months later doesn't mean this document was considered. Was it part of the record or not?
>
> MR. MORAN: Yes.
>
> THE COURT: What evidence do you have of that?
>
> MR. MORAN: The Department joined us. If the Department filed an answer and said no, we didn't consider that --
>
> THE COURT: Sir, this doesn't say -- with all due respect, this motion does not say that this particular letter was part of the administrative record, part of the record that was considered by the Department of Agriculture in granting the permit to Curative. I've got an unsubstantiated statement saying it was forwarded to the Department prior to the award. There's no question about that. I imagine the Department of Agriculture has more than a couple of employees. I have no idea whether the person to whom this was forwarded sent it to the board or the panel that considered the permit or not, and I have no indication that this was a basis for their award on that.
>
> MR. MORAN: So you are saying the chief counsel of the agency that was responsible for this program didn't do his job, didn't consider it, didn't --
>
> THE COURT: Don't try to put words in my mouth, Mr. Moran. I have no idea where this letter was sent, to whom it was sent, or whether it was, in fact, sent. I have no affidavit. I have nothing indicating this was a piece of evidence[] [that] was considered by the Department of Agriculture. I have no indications it was ever made part of the [administrative] record. I have no idea what this is other than perhaps a self-serving letter by the City of Aurora, and, as such, I'm going to deny your request. (R124-R126)

Curative appealed the order, but the appellate court did not reach this issue: "Based on our reversal of the trial court's administrative review findings, we need not reach Curative's remaining contentions." (A23, ¶43)

The appellate court acknowledged that the letter was not included in the administrative record (A13-A14, ¶20), but nevertheless discussed the letter in the "Background" section of its order as if it was a part of the administrative record and quoted the letter in its entirety. (A5-A6, ¶8) All of this demonstrates that the appellate court considered the letter in reaching its decision to defer to IDOA. Indeed, Curative noted this in its answer to Medponics' petition for leave to appeal to this Court: "[T]he Appellate Court clearly considered the content of the letter in reversing the trial court." (Curative Answer to PLA, p. 10, n. 3) Such consideration by the appellate court was erroneous because the letter is not part of the administrative record.

The second item considered by the appellate court outside the administrative record was IDOA's "Medical Cannabis Pilot Program Frequently Asked Questions" document ("FAQ"), dated February 18, 2015. (A18, ¶34; A31-A41)[6] The following question and answer are included in the FAQ:

> The definition of "area zoned residential" is an area zoned "exclusively residential." If the local municipality provides a letter that is zoning districts located within 2,500 feet of a cultivation center are not zoned "exclusively" residential because in addition to residential uses, the zoning districts allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses including commercial uses, will that satisfy this requirement?
>
> Yes, but the applicant must verify setback regulations are also met, located in the Department of Agriculture Administrative Rule section 1000.40(e). The Department will rely heavily on the local zoning authority's approval. (A33)

Notably, the foregoing section of the FAQ is discussed in the Aurora-IDOA letter as support for Aurora's position that its R-1 and R-5 zoning districts are not zoned

[6] This document remains publicly available at the web address cited in the Second District's order (A18, ¶34), last visited on May 28, 2020.

exclusively residential because non-residential special uses are permitted in those districts. (A29-A30)

Although the FAQ pre-dates IDOA's October 30, 2015 permit award to Curative (C3731-C3732), there is no evidence in the administrative record that IDOA relied upon it as part of the permit application process. The appellate court thus erroneously relied upon the FAQ in reaching its decision to reverse the circuit court's administrative review findings and return the permit to Curative.

IV. IDOA's interpretation of "area zoned exclusively for residential use" impermissibly limits the scope of the Act's cultivation center location requirement to less than all municipalities in the state.

A. An administrative agency's rules may not limit the scope of a statute.

An administrative agency such as IDOA "possesses no inherent or common law powers." *Wood-Dale Fire Protection District v. Illinois Labor Relations Board,* 395 Ill. App. 3d 523, 527 (2d Dist. 2009) (citation omitted). "Accordingly, the authority of an administrative agency to adopt rules and regulations is defined by the statute creating that authority, and such rules and regulations must be in accord with the standards and policies set forth in the statute." *Id.; see also, Illinois RSA No. 3, Inc. v. Department of Central Management Services,* 348 Ill. App. 3d 72, 76 (2d Dist. 2004) (administrative agency "has only such authority as conferred by statute"). As a general rule, if an agency promulgates rules that are "beyond the scope of the statute or that conflict with the statute, the rules are invalid." *Wood Dale Fire Protection District,* 395 Ill. App. 3d at 528 (citation omitted). Moreover, an agency "cannot, through its rulemaking, limit the scope of the statute." *Hadley v. Illinois Dep't of Corrections,* 224 Ill. 2d 365, 377 (2007); *see*

also, Kean v. Wal-Mart Stores, Inc., 235 Ill. 2d 351, 366 (2009). This issue is reviewed *de novo*. *Wood Dale Fire Protection District*, 395 Ill. App. 3d at 528.

B. Under IDOA's interpretation, the Act's cultivation center location requirement does not apply to all municipalities in the state.

IDOA and Curative contend that the Rules' definition of the Act's location requirement "area zoned for residential use" as "an area zoned exclusively for residential use" means "an area zoned exclusively for residential use with no special use permits for non-residential uses allowed." If IDOA and Curative are correct, then the Act's cultivation center location requirement applies only in those municipalities that do not allow special use permits for non-residential uses in districts zoned exclusively residential instead of in all municipalities in the state.[7] This interpretation thus impermissibly limits the scope of the Act's cultivation center location requirement, as *Hadley, supra,* illustrates.

In *Hadley,* the plaintiff inmate filed a class action complaint seeking to enjoin the Illinois Department of Corrections ("DOC") from charging him and other indigent inmates a $2 co-payment for nonemergency medical and dental services. *Hadley*, 224 Ill.2d at 367. Under the Unified Code of Corrections, an indigent inmate is "exempt" from making the $2 co-payment. *Id.* at 368, 371-373. DOC's rules, however, stated that

[7]Indeed, Curative admitted as much below. In the circuit court, Curative argued that some municipalities – such as the Village of North Barrington – do not allow special use permits for non-residential uses in areas zoned exclusively residential. (C2592-C2593, C2617-C2635) Curative then stated in the appellate court that the Village of North Barrington Zoning Ordinance demonstrates that "there are in fact zoning districts in this state which are 'exclusively residential,' the same are just not located in Aurora." (A47) In other words, according to Curative, the Act's geographic location requirement for cultivation centers applies in the Village of North Barrington, but not in the City of Aurora. Medponics responded in the Second District with the argument presented here. (A56-A58) The Second District did not address it. (A1-A23)

the trust funds of indigent inmates were to be charged for the co-payment and that upon release, the inmate could apply for an "indigence exemption" to clear the balance due. *Id.* at 374. This Court held that DOC's rule was clearly erroneous because it impermissibly restricted the scope of the statute's indigence exemption:

> DOC's rules effectively exclude inmates serving life sentences from the reach of the statutory exemption. This is so because under DOC's definition of "indigent," no action is taken on the statutory exemption until discharge from the [DOC] – a day that will never arrive for this group of inmates. Section 3-6-2(f) [of the statute], however, contains no exception from the indigence exemption for inmates serving life sentences. The same is true of inmates who have been sentenced to death. An agency cannot, through its rulemaking, limit the scope of the statute. *Hadley*, 224 Ill. 2d at 376-377.

Here, IDOA's interpretation of its rule defining "residential area" under the Act, like DOC's interpretation of its rule in *Hadley*, impermissibly limits the scope of the Act's cultivation center location requirement. Under IDOA's interpretation, the only municipalities in which the Act's cultivation center location requirement applies are those which do not allow special use permits for non-residential uses in areas zoned exclusively residential. Like the Unified Code of Corrections in *Hadley*, the Act's cultivation center location requirement is unambiguous. It does not contain the limitation advanced by IDOA and Curative here, and the limitation cannot be implied by the court. "Where an enactment is clear and unambiguous, a court is not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitation, or conditions that the legislature did not express." *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271, ¶15 (citation omitted).

The fact that the Act's cultivation center location requirement is to apply statewide (along with all of the Act's other provisions) is further supported by the following:

(1) *IDOA's acknowledgment below that the Act's cultivation center location requirement is to apply statewide.*

In the circuit court, IDOA asserted that defining the Act's cultivation center location requirement as "area zoned exclusively for residential use" was reasonable in order to maximize the locations available throughout Illinois for cultivation centers. (C2556) IDOA explained that "the purpose of the Act is to expand the use of medicinal cannabis in Illinois" and that "[r]estricting cultivation centers to a setback requirement of 2,500 feet from any area zoned for residential use, without requiring exclusivity" – such as "mixed use" areas, for example, S. Connor, *Zoning*, §13.12 – "would significantly restrict the space available within which to operate a cultivation center. And cultivation centers – where the cannabis will be grown – are essential to the expansion of medicinal cannabis in Illinois." (C2556)

That IDOA understands the Act's cultivation center location requirement to apply statewide is also demonstrated by the language of the rule at issue. The focus of this case is the interpretation of the rule's phrase "'Area zoned for residential use' means an area zoned exclusively for residential use." 8 Ill. Adm. Code 1000.10. However, the rule also states that "in municipalities with a population over 2,000,000 people, 'an area zoned for residential use' means an area zoned as a residential district or a residential planned development." *Id.* This latter phrase demonstrates IDOA's understanding that the Act's cultivation center location requirement is to apply to all municipalities throughout the state, regardless of size.

(2) *The recreational cannabis statute.*

Illinois' recreational cannabis statute, the Cannabis Regulation and Tax Act ("the Cannabis Regulation Act"), took effect on January 1, 2020. 410 ILCS 705/1-1. The Cannabis Regulation Act legalizes the recreational use of cannabis for persons 21 years of age or older and taxes recreational cannabis in a manner similar to alcohol "[i]n the interest of allowing law enforcement to focus on violent and property crimes, generating revenue for education, substance abuse prevention and treatment, freeing public resources to invest in communities and other public purposes, and individual freedom." 410 ILCS 705/1-5(a).

The legislative findings in support of the Cannabis Regulation Act state that it is to apply consistently throughout the state:

> The General Assembly further finds and declares that it is necessary to ensure consistency and fairness in the application of this Act **throughout the State** and that, therefore, **the matters addressed by this Act are**, except as specified in this Act, **matters of statewide concern**. 410 ILCS 705/1-5(c) (emphasis added).

The legislative findings also state that the Cannabis Regulation Act is to work in tandem with the Act at issue:

> The General Assembly further finds and declares that this Act shall not diminish the State's duties and commitment to seriously ill patients registered under the Compassionate Use of Medical Cannabis Program Act, nor alter the protections granted to them. 410 ILCS 705/1-5(d); see also 410 ILCS 705/55-85.

Because all provisions of the recreational cannabis statute are to apply statewide, all provisions of the medical cannabis statute must apply statewide as well.[8] *See, e.g.,*

[8]*N.B.:* Under the Cannabis Regulation Act, a "craft grower" is akin to a cultivation center under the Act at issue; "craft grower" is defined as a "facility operated by an organization

DeLuna v. Burciaga, 223 Ill. 2d 49, 60 (2006) ("We must presume that several statutes relating to the same subject are governed by one spirit and a single policy, and that the legislature intended the several statutes to be consistent and harmonious.").

* * *

One final point.

Medponics does not contend that the rule at issue is invalid. Medponics contends only that IDOA's interpretation of the rule is wrong and asks only that the rule be applied as it is written. As discussed throughout, IDOA's interpretation is contrary to established Illinois law regarding special uses and it restricts the application of the Act's cultivation center location requirement to fewer than all municipalities within the state. This interpretation cannot stand and reversal is required.

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or business that is licensed by the Department of Agriculture to cultivate, dry, cure, and package cannabis and perform other necessary activities to make cannabis available for sale at a dispensing organization or use at a processing organization." 410 ILCS 705/1-10. Like cultivation centers under the Act at issue, the Cannabis Regulation Act requires that "[a] craft grower may not be located in an area zoned for residential use." 410 ILCS 705/30-30(e). IDOA's emergency rules implementing the Cannabis Regulation Act define "area zoned for residential use" as "**an area zoned exclusively for residential use;** provided that, in municipalities with a population over 2,000,000 people, an 'area zoned for residential use' means an area zoned as a residential district or a residential planned development. **An area that allows non-residential uses shall not be considered an area zoned exclusively for residential use.**" 8 Ill. Adm. Code 1300.10 (eff. Jan. 1, 2020) (emphasis added). Medponics submits that this rule may suffer from the same infirmities as the rule at issue.

Conclusion

WHEREFORE, for the reasons stated above and on the authorities cited, plaintiff-appellant Medponics Illinois, LLC respectfully prays that this Court reverse the appellate court's order of October 7, 2019 and affirm the circuit court's orders of August 24, 2017 and November 30, 2017. Medponics Illinois, LLC also requests all such other and further relief to which this Court finds it entitled.

Respectfully submitted,

/s/ Melissa A. Murphy-Petros

By:_____
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*Ms. Murphy-Petros gratefully acknowledges the assistance of law clerk Gabriela Herrera in the preparation of this brief. Ms. Herrera is a 2020 graduate of Chicago-Kent College of Law and will be joining Wilson Elser as an associate upon completion of the Illinois Bar Examination.

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 31 pages.

/s/ Melissa A. Murphy-Petros
Melissa A. Murphy-Petros

APPENDIX

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2019 IL App (2d) 170977-U
Nos. 2-17-0977 & 2-18-0013 & 2-18-0014 cons.
Order filed October 7, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MEDPONICS ILLINOIS LLC, and Illinois Limited Liability Company,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	
ILLINOIS DEPARTMENT OF AGRICULTURE; RAYMOND POE, Director of Agriculture; and JACK CAMPBELL, Chief of Medicinal Plants of the Illinois Department of Agriculture,	)	No. 15-MR-2061
Defendants-Appellants,	)	
CURATIVE HEALTH CULTIVATION, LLC, and Illinois Liability Company,	)	
Defendant-Appellant	)	
CITY OF AURORA, and Illinois Municipal Corporation,	)	Honorable Michael J. Fusz,
Proposed Intervenor-Appellant	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court, with opinion.
Justices Jorgensen and Burke concurred in the judgment and opinion.

2019 IL App (2d) 170977-U

¶ 1 *Held:* We reverse the trial court's findings on administrative review as the Illinois Department of Agriculture's interpretation of its own regulation regarding "an area zoned exclusively for residential use" is reasonable. We affirm the trial court's order finding that the confidentiality provisions of the Compassionate Use of Medical Cannabis Pilot Program Act do not compel the seal of the record on administrative review.

¶ 2 I. BACKGROUND

¶ 3 The Compassionate Use of Medical Cannabis Pilot Program Act (the Act) became effective on January 1, 2014. 410 ILCS 130/1 *et seq* (West 2016). The Act provides that dispensaries, cultivation centers, and their agents are not subject to arrest, prosecution, civil penalties or disciplinary action for the dispensation or cultivation of medical cannabis. 410 ILCS 130/25 (West 2016). The Act defines a medical cannabis cultivation center as "a facility operated by an organization or business that is registered by the Department of Agriculture to perform necessary activities to provide only registered medical cannabis dispensing organizations with usable medical cannabis." 410 ILCS 130/10(e). Registration and oversight of medical cannabis cultivation centers is enforced by the Illinois Department of Agriculture (IDOA) through the provisions of the Act. 410 ILCS 130/15(b) (West 2016). The Act provides that the IDOA "may register up to 22 cultivation center registrations for operation," with a limit of one registration for each of the 22 Illinois State Police Districts across the state. 410 ILCS 130/85(a) (West 2016).

¶ 4 Section 150(c) of the Act provides that "[a] registered cultivation center may not be located within 2,500 feet of *** an area zoned for residential use." 410 ILCS 130/105(c) (West 2016). The Act does not define the term "an area zoned for residential use." The IDOA adopted administrative rules governing its enforcement of the Act's provisions relating to the registration and oversight of cultivation centers (IDOA rules). 8 IL ADC 1000.1 *et seq*. The IDOA's rules define the term "an area zoned for residential use" as "an area zoned exclusively for residential use." 8 IL ADC 1000.10 (West 2016).

¶ 5 To apply for and receive a permit for a cultivation center, applicants must adhere to the provisions of Subpart B of the IDOA rules. Subpart B details the rules regarding permit application, selection criteria, permit issuance, renewal, fees, modifications, and denial of application. The selection criteria are made up of categories of information the applicant must submit to the IDOA. 8 IL ADC 1000.100 (West 2016). Relevant here, applicants must submit:

> "A copy of the current local zoning ordinance to the Department and verification from the local zoning authority that the proposed cultivation center is in compliance with the local zoning rules issued in accordance with Section 140 of the Act (Section 85 of the Act)." 8 IL ADC 1000.100(d)(17) (West 2016).

Additionally, the applicants must provide:

> "A location area map of the area surrounding the proposed cultivation center. The map must clearly demonstrate that the proposed cultivation center is not 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 (Section 105 of the Act)." 8 IL ADC 1000.100(d)(19) (West 2016).

The IDOA rules then list the criteria and measures required to be addressed by applicants in their permit application. The required criteria and measures are broken down into six categories and assigned point values as follows: (1) Suitability of the Proposed Facility (150 points); (2) Proposed Staffing Plan and Knowledge of Illinois Law and Rules Relating to Medical Cannabis (100 points); (3) Security Plan (200 points); (4) Cultivation Plan (300 points); (5) Product Safety and Labeling Plan (150 points); and (6) Applicant's Business Plan and Services to be Offered (100 points). 8 IL ADC 1000.110(b) (West 2016). Applicants can also earn up to 20 bonus points in

each of the following eight categories: (1) Labor and Employment Practices; (2) Research Plan; (3) Community Benefits Plan; (4) Substance Abuse Prevention Plan; (5) Local Community/Neighborhood Report; (6) Environmental Plan; (7) Verification of Minority Owned, Female Owned, Veteran Owned, or Disabled Person Owned Business; and (8) Verification that the applicant's principal place of business is headquartered in Illinois. 8 IL ADC 1000.110(c) (West 2016). The applicant with the highest overall score is issued the cultivation center permit. 8 IL ADC 1000.110(f) (West 2016). In the event that an entity is awarded a permit and then forfeits that permit, the permit is awarded to the next highest scoring qualified applicant. 8 IL ADC 1000.40(d) (West 2016).

¶ 6 Plaintiff, Medponics Illinois, (Medponics), and defendant, Curative Health Cultivation (Curative), each filed an application for a cultivation center permit with the IDOA in September 2014. On October 14, 2014, Curative filed a special use petition with the City of Aurora. The petition sought the authorization of the use of Curative's proposed location in Aurora as a medical cannabis cultivation center. The proposed location of Curative's cultivation center is 2229 Diehl Road in Aurora. This location is within 2,500 feet of areas R-1 and R-5, areas zoned as residential under the Aurora Zoning Ordinance (AZO). The AZO defines a "residential area" as "[a] zoning lot or portion of a zoning lot designed or used exclusively for residential purposes." The AZO details certain special, accessory, and limited but permitted uses allowed in each area zoned as a "residential area."

¶ 7 Relevant here, area R-1 allows home occupations; community residences; transportation services; air passenger terminal; rail transportation; residential and non-residential parking facilities; electric utility facility; utilities and utility services; alternative energy services; community center; golf courses; natural and other recreational parks; educational services; public

facilities and services; health and human services; day care; hospital or sanatoria; cemeteries or mausoleums; social service agencies, charitable organizations, health related facilities, and similar uses when not operated for profit; truck gardening; stormwater management facilities, drainage area, and common landscapting areas; and planned development. Area R-5 allows for all of the above listed uses in addition to housing services for the elderly; automated business devices; nursing, supervision and other rehabilitative services; and mental health facilities.

¶ 8 On November 4, 2014, the Aurora Planning Commission held a public hearing on Curative's special use petition. Curative was found to have met the standards of the AZO and the petition was recommended for approval. On November 18, 2014, the Aurora City Council granted Curative's special use petition, finding that it "is not contrary to the purpose and intent of *** the Aurora Zoning Ordinance." On April 29, 2015, Edward Sieben, the Zoning Administrator for Aurora sent a letter to Craig Sonderoth, General Counsel for IDOA, regarding: Aurora Non-"Exclusively Residential" Zoning near Curative Health Cultivation, LLC at 2229 Diehl Road, Aurora, Illinois. Seiban's letter read as follows:

> "The Department of Agriculture is charged with registering and regulating up to 22 cultivation centers allowed in the law. The Department of Agriculture Administrative Rules were approved by the JCAR committee on July 15, 2014. *** Section 1000.10 of the Administrative Rules, defines an "Area zoned for residential use" as:
>
> "an area zoned exclusively for residential use; provided that, in municipalities with a population over 2,000,000 people, "an area zoned for residential use" means an area zoned as a residential district or a residential planned development." ***

The definition set forth in the Administrative Rules raised the obvious question as to what constituted an "area zoned exclusively for residential use." On August 25, 2014, the Illinois

Department of Agriculture released a Frequently Asked Questions document that addressed this question as follows:

> "The definition of "area zoned residential" is an area zoned "exclusively residential." If the local municipality provides a letter that its zoning districts located within 2500 feet of a cultivation center are not zoned "exclusively" residential because in addition to residential uses, the zoning districts allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses including commercial uses, will that satisfy this requirement? Yes, but the applicant must verify setback regulations are also met, located in the Department of Agriculture Administrative Rules section 1000.40(e). The Department will rely heavily on local zoning authority's approval.
>
> ***
>
> Aurora's Zoning Code does allow for such other uses such as churches, parks, schools, utility substations, and/or other planned uses in a residential district. This is clearly laid out in Table 1 of Aurora Zoning Ordinance titled Use Categories ***. Specifically, this includes the R-1 Zoning District of the nearby Harris Farms and Palomino Springs subdivisions located sourth of the Prairie Path, the Stonebridge Subdivision zoned PDD with underlying R-1 Zoning, and the R-1 and R-5 Zoning Districts of the East View Estates Subdivision to the west.
>
> ***."

¶ 9 On October 30, 2015, the IDOA provided a "Notice of Award" to Curative granting their application for an operating permit in Illinois State Police District 2. Also on October 30, 2015, Medponics was provided with a "Notice of Denial of Medical Cannabis Cultivation Center Permit" by the IDOA. Of all entries submitted for applications for permits to operate a cannabis

cultivation center in Illinois State Police District 2, Curative finished first in scoring while Medponics was fifth.

¶ 10 On December 3, 2015, Medponics filed a verified complaint in the Lake County Circuit Court for administrative review. The complaint named IDOA, the IDOA Director, and the IDOA Chief of the Bureau of Medicinal Plants as defendants. On February 18, 2016, the trial court ordered Medponics to add Curative as a defendant. On March 24, 2016, Medponics filed a first amended complaint naming Curative as a defendant along with the originally named IDOA defendants.

¶ 11 On April 28, 2016, Curative filed a motion for transfer of venue pursuant to sections 2-104 and 3-104 of the Illinois Code of Civil Procedure (the Code). The motion requested that the matter be transferred to Sangamon County. Curative argued that the only connection between the matter and Lake County is that it is Medponics' principal place of business. On July 28, 2016, the trial court denied Curative's motion for transfer of venue citing that section 3-104(2) of the Code applies and "the subject matter of this administrative review is in Lake County making it a proper venue." Section 3-104(2) of the Code provides that venue is proper where "any part of the subject matter involved is situated." 735 ILCS 5/3-104(2) (West 2016).

¶ 12 On September 8, 2016, the IDOA defendants, Curative, and Medponics filed an unopposed motion for leave to file the administrative record under seal and joint motion for a protective order. The joint motion requested the trial court to issue an order sealing the administrative record pursuant to the confidentiality provisions in section 145 of the Act. The joint motion also requested that the trial court enter an agreed protective order controlling the dissemination of confidential information by the parties for the purposes of the litigation. On September 21, 2016, the trial court denied the motion finding that "the Joint Motion for Entry of

Protective Order fails to overcome the presumption of the public's right to access the entire proceedings ***." In denying the joint motion, the trial court granted the parties leave to file supplemental briefing to present to the court authority as to why the administrative record being filed under seal overcomes the public's right to access. The trial court ordered IDOA to file the administrative record under temporary seal pending final resolution of the joint motion.

¶ 13 Following the parties' briefing on the issue of sealing the administrative record, on December 15, 2016, the trial court ordered Curative and Medponics to deliver lists to each other's opposing counsel detailing what information in the administrative record should be redacted. The trial court concluded that it would reserve ruling on what would information would be confidential or public but articulated that the trial court "has made a preliminary determination that is not bound by the confidentiality provisions of 410 ILCS 130/145."

¶ 14 On May 19, 2017, the trial court issued a memorandum opinion and order which granted in part and denied in part the unopposed joint motion to seal the record. The trial court allowed the redaction of personal data, financial information, propriety business information, trade secret information, and security measures taken in relation to the unique nature of medical marijuana. The trial court found as follows regarding the remaining information in the administrative record:

> "[T]he Court finds that simply citing the Act, its provisions regarding confidentiality, and even its penalty provision for disclosure is simply insufficient to justify sealing the entire court file and administrative record in this case. Just because the legislature has included a strong confidentiality provision in a statute does not mean that the courts are bound to seal or impound court files which contain some materials to be filed for administrative review and upon which the court must make and justify its decision in this case. While

> there is some general justification for the confidentiality provision, as argued by the parties, the legislature failed to specifically indentify any compelling interest in non-admission, nondiscoverability or even in confidentiality sufficient to justify sealing the entire court file. If a similar confidentiality provision were to be included in every new statute, for the example, the Court would not be bound by it unless it were, in fact, based on a specifically indentified interest to be protected. Even then, the Court would be required to balance it against the public's right of access. Thus, the Court rejects the parties' arguments that it must seal the entire administrative record purely based on 410 ILCS 130/145."

¶ 15 On February 24, 2017, Medponics filed its verified second amended complaint for administrative review. The complaint alleged that Curative was improperly awarded the Illinois State Police District 2 cultivation center permit as the proposed cultivation center is within 2,500 feet of two areas zoned exclusively for residential use. Medponics argued that the Act's location requirement, that the proposed location be 2,500 feet away from area zoned exclusively for residential use, disqualified Curative's application. In its prayer for relief, Medponics requested, amongst other things, that the trial court "[o]rder the [IDOA] to appoint a fair and impartial panel with no prior involvement in the process to re-score [Medponics'] and any other remaining applications (as originally submitted) for District 2 in accordance with the 2014 Rules." On March 13, 2017, Curative filed a verified answer to Medponics' second amended complaint, asking the trial court to dismiss the complaint and affirm the decision of the IDOA to award the cultivation center permit to Curative.

¶ 16 On August 24, 2017, the trial court issued a non-final administrative review order. The trial court ordered as follows:

"The Court, having heard oral argument by all parties and conducting an Administrative Review hearing, hereby sets aside the award of the District 2 license/permit to Curative *** for the following reasons:

The Court understands that as an administrative agency, the IDOA is to be given significant or substantial deference in its rulemaking and interpretation of its rules. Insofar as the IDOA has approved Rules 8 IL ADC 1000.10 and 1000.100 purporting to interpret the phrase defining areas "zoned for residential use" as cited in 410 ILCS 130/105(c), while the Rules seem to expand the phrase, the Court does not find that the IDOA rules are improper or clearly erroneous. Although it has been suggested the rules go too far, this has not been argued by Medponics. Therefore, the court is accepting these IDOA rules as they are set forth; the Court does not find that the rules are clearly inconsistent with Sec. 130/105(c).

However, this Court finds that, as a matter of mixed law and fact, that the State and Curative's interpretation and application of the statute and IDOA's own rules, to the extent they believe that setback rule only applies to areas where *nothing* but residences are permitted is clearly erroneous.

The rule itself defines an "area zoned for residential use" as "an area exclusively zoned for residential use." All parties agree the Curative site is within 2500 feet of the R1 and R5 areas zoned for residential use. The City of Aurora has defined R1 and R5 as exclusively residential and simply because it allows special uses and special use permits, the areas are still "zoned exclusively for residential purposes" even though this designation permits certain special uses. These areas remain exclusively residential, and

by the very terms of the IDOA's rule, the Curative facility could not be within 2500 feet of areas zoned as exclusively residential.

Neither the Act nor the Rule states "areas zoned for residential use, unless there is a special use allowed." Curative and IDOA's position is illogical and does not fit the plain meaning of the statute nor *** is it consistent with the purpose of the setback provision in the statute and the rules. The mere fact that hospitals, cemeteries, etc. may be granted special use permits in the "exclusively residential use" zones does not make these area out of the purview of the Act or the rules.

As such, the R1 and R5 zoning areas in Aurora, agreed by all parties to be within 2500 feet of the proposed Curative center, are hereby found by the Court to be "area zoned exclusively for residential use" and therefore the proposed Curative site violates both the statute and Section 1000.10 of the rules.

As such, awarding Curative the license for the site was improper, and violates both the statute and IDOA's own rules as R1 and R5 are "areas zoned exclusively for residential use."

The award of the license to Curative is therefore clearly erroneous; the Court has the definite and firm conviction that a mistake has been made.

***

The Court finds that it does not necessarily follow that because Curative does not qualify for the license, that Medponics is to be awarded the license, although the Court acknowledges that the time and expense expended by Medponics was instrumental in bringing this action. Rule 8 IL ADC 1000.40(d) specifically indicates that, in case an awardee forfeits a permit, the permit shall be awarded to the next qualified applicant in

terms of points. While there is not "forfeiture" per se, to the extent Curative is disqualified, this case is to be remanded for rescoring, and reevaluation of the qualifications of all the applicants by the IDOA as well as a reassessment of the award in District 2.

***

The Court hereby continues this matter for 21 days, or until 9/14/17, for entry of a final order."

¶ 17 On September 12, 2017, the City of Aurora filed a petition to intervene. The petition argued that intervention should be allowed as a matter of right pursuant to section 2-408(a)(2) of the Code. Additionally, the petition sought intervention pursuant to section 2-408(d) of the Code, arguing the trial court's interpretation of the City's zoning categories as "exclusively residential" relates to the validity and integrity of Aurora's zoning ordinance. Further, the City argued that the trial court's interpretation contradicts those of the Aurora Zoning Administrator contained in the April 29th letter to the general counsel of the IDOA. Aurora argued that their petition to intervene was timely as the trial court's August 24, 2017, order was non-final.

¶ 18 On September 13, 2017, Curative and the IDOA filed a joint motion to supplement the record. The motion sought to supplement the record with three additional documents as part of the administrative review record: (1) the permit award letter issued by the IDOA to Curative on October 30, 2015; (2) the City of Aurora's ordinance granting Curative a special use permit to operate its cultivation center; and (3) the April 29, 2015 letter from Aurora's Zoning Administrator to the IDOA concerning the issue of "exclusively residential."

¶ 19 On November 3, 2017, the trial court held a hearing on both Aurora's petition to intervene and the joint motion to supplement the record filed by Curative and IDOA. Regarding the petition to intervene, the trial court said:

> "I don't find, frankly, that Aurora's petition to intervene is timely. Whether it's brought as a matter of right or as a permissive intervention, I have heard no satisfactory explanation whatsoever and I've got no credible information *** upon which I can make a decision when the City learned of this litigation or when they didn't other than they learned about the adverse decision sometime after August 24, 2017. I find it, frankly, hard to believe that the City of Aurora had absolutely no knowledge that this case was pending or that Medponics was challenging the award by the [IDOA]."

The court went on to state that, although its August 24, 2017, decision did require the interpretation of the AZO's zoning definitions, the "only issue was to determine whether or not the [IDOA] was acting properly based on the language of the statute based on its own rules and regulations as far as the setback." Finally, regarding the petition to intervene, the court stated that the City of Aurora's interest in the litigation to be "remote in terms of economic interest, slightly better than the general public, but not much better, and the most directly affected parties here are Medponics and Curative."

¶ 20 The trial court then moved on to Curative and IDOA's joint motion to supplement the record. The trial court allowed the motion, in part, by supplementing the record with the October 30, 2015, permit award letter and the City of Aurora's ordinance granting Curative a special use permit to operate the cultivation center. The trial court denied supplementing the record with the April 29, 2015, letter from Aurora's Zoning Administrator to the IDOA. As to this denial, the

trial court stated that there was no evidence presented indicating that the IDOA ever reviewed the letter or considered it in awarding the permit.

¶ 21 On November 30, 2017, the trial court entered its final order. The final order incorporated the order entered on August 24, 2017, and granted Curative's request for a stay of judgment pursuant to Supreme Court Rule 305(b). The trial court entered a finding pursuant to Supreme Court Rule 304(a), finding no just reason for delaying enforcement or appeal of the order. All parties timely appealed.

¶ 22 II. ANALYSIS.

¶ 23 Before beginning our analysis of the issues presented in this consolidated appeal, we must address a contention raised by Medponics in its appellee's brief presented to this court. Medponics contends its application for the District 2 cultivation center permit is the only application that should be rescored by the IDOA. Medponics argues that because it were the only applicant for the permit that exhausted its administrative remedies under the Act and the IDOA rules, it is the only applicant entitled to the benefit of rescoring. This contention is improperly before this court.

¶ 24 Medponics' contention above seeks modification of the trial court's November 30, 2017, final order. This court is not at liberty to reverse or modify the trial court's order at the urging of the appellee since the appellee, Medponics, has failed to file a cross-appeal. *Mid-West Nat. Bank of Lake Forest v. Metcoff*, 23 Ill. App. 3d 607, 610 (1974). In the absence of a cross-appeal, the matters contended by Medponics are not properly before this reviewing court and are not subject to review on this appeal. *Id.* Therefore, this court lacks jurisdiction to entertain Medponics' above contention as it has failed to file a mandatory cross-appeal to attack the trial court's November 30, 2017, order.

¶ 25 We now move on to the remaining issues raised by the appellants in this appeal. Curative contends that the trial court erred in (1) finding that their proposed cultivation center is within 2,500 feet of an area zoned "exclusively" for residential use; (2) finding that Lake County is the appropriate venue for the proceedings; (3) finding that their application was not protected by the confidentiality provisions of the Act; and (4) excluding the April 29th letter from the Aurora Zoning Administrator to the IDOA from the record. The IDOA contends that the trial court erred by failing to accord substantial deference to the IDOA's interpretation of its own regulation and that the trial court's interpretation violates rules of statutory construction. Finally, the City of Aurora contends that the trial court abused its discretion in denying its petition to intervene. We begin our analysis with a discussion of the crux of this appeal: whether Curative's proposed cultivation center is located within 2,500 feet of areas zoned exclusively for residential use.

¶ 26 In administrative review cases, the appellate court reviews the decision of the agency, not the trial court. *Village of Oak Brook v. Sheahan*, 2015 IL App (2d) 140810, ¶ 29. "The applicable standard of review, which determines the degree of deference given to the agency's decision, depends upon whether the question presented is one of fact, one of law, or a mixed question of law and fact." *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill.2d 380, 390 (2001). The factual findings of the administrative agency are considered to be *prima facie* correct and will be reversed only if against the manifest weight of the evidence. 735 ILCS 5/3-110 (West 2016). Questions of law are reviewed *de novo*. *Doe Three v. Department of Public Health*, 2017 IL App (1st) 162548, ¶ 25. Mixed questions of law and fact are reviewed under the clearly erroneous standard. *Id.*

¶ 27 The trial court found that the issue of whether the phrase "area zoned exclusively for residential use" in the IDOA rules includes areas zoned for residential use and specially permitted uses, presents a question of "mixed law and fact." Mixed questions of fact and law are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 211 (2008).

¶ 28 The facts in this case are undisputed. All parties agree that Curative's proposed cultivation center is located within 2,500 feet of two areas zoned for residential use. However, the parties are in dispute as to whether the IDOA's phrase "area zoned exclusively for residential use" includes areas that allow for special uses other than residential. Therefore, this issue presents a question of law which we review *de novo*. *Village of Oak Brook v. Sheahan*, 2015 IL App (2d) 140810, ¶ 30.

¶ 29 Courts apply the same rules in interpreting administrative regulations as in construing statutes. *Weyland v. Manning*, 309 Ill. App. 3d 542, 547 (2000). Thus, we first consider the language of the regulation. If it is clear, we need not look to other aids for construction. *Id*. Generally, a reviewing court affords substantial deference to an agency's interpretation of its own regulations. *Id*. Although we apply the *de novo* standard of review, an administrative agency's interpretation of its own regulations is accorded deference by the reviewing court unless it is clearly erroneous, arbitrary, unreasonable or inconsistent with past interpretations. *Portman v. Department of Human Services*, 393 Ill. App. 3d 1084, 1088 (2009).

¶ 30 In interpreting an agency regulation, our primary objective is to ascertain and give effect to the intent of the agency, in this case, the IDOA. *People ex rel. Madigan v. Illinois Commerce*

Commission, 231 Ill. 2d 370, 380 (2008). The surest and most reliable indicator of intent is the language of the regulation itself. *Id*.

¶ 31 Section 105(c) of the Act provides that "[a] registered cultivation center may not be located within 2,500 feet of *** an area zoned for residential use." The Act does not define the term "area zoned for residential use." Section 15(b) of the Act provides that "[i]t is the duty of the [IDOA] to enforce the provisions of this Act relating to the registration and oversight of cultivation centers ***." Section 165(c)(8) of the Act provides that the IDOA "may adopt rules related to the enforcement of this Law." The IDOA adopted rules related to the Act which define the phrase "area zoned for residential use" as an "area zoned exclusively for residential use." 8 IL ADC 1000.10 (West 2016).

¶ 32 The plain language of the IDOA rules intends to prohibit cultivation centers within 2,500 feet of area zoned "exclusively" for residential use. 8 IL ADC 1000.10. The term "exclusively" does not present ambiguity. The term "exclusively" is defined as "apart from all others," "solely," and "to the exclusion of all others." See Oxford Online Dictionary, https://en.oxforddictionaries.com/definition/us/exclusively (last visited Mar. 4, 2019).

¶ 33 Although Curative's proposed cultivation center is located within 2,500 feet of the R-1 and R-5 zoning districts in Aurora, the record reflects that these areas are not exclusively residential. The AZO reflects areas R-1 and R-5 as having a litany of special and accessory uses other than residential. See *supra* ¶ 5. In its ordinance granting Curative a special use permit for a medical cannabis cultivation facility, the City of Aurora stated that Curative's "petition met the standards prescribed by *** the Aurora Zoning Ordinance." Aurora further stated that "the proposed Special Use will not be detrimental to or endanger the public health, safety, morals,

comfort or general welfare and will not be injurious to the use of other property in the immediate vicinity, nor diminish or impair property values in the neighborhood."

¶ 34 The IDOA provides further guidance on this issue in their answers to frequently asked questions at their website in the following manner:

> "The definition of "area zoned residential" is an area zoned "exclusively residential." If the local municipality provides a letter that its zoning districts located within 2500 feet of a cultivation center are not zoned 'exclusively' residential because in addition to residential uses, the zoning districts allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses including commercial uses, will that satisfy this requirement?
>
> Yes, but the applicant must verify setback regulations are also met, located in the Department of Agriculture Administrative Rules section 1000.40(e). The Department will rely heavily on local zoning authority's approval." See Illinois Department of Agriculture-Medical Cannabis Pilot Program Frequently Asked Questions, https://www2.illinois.gov/sites/agr/Plants/MCPP/Documents/mcppfaq.pdf (last visited Mar. 4, 2019).

¶ 35 The AZO clearly zoned districts R-1 and R-5 as residential. However, the many other allowed uses in these areas make clear that they are zoned for non-residential special uses as well. In short, they are not "exclusively" residential. Medponics argues that the R-1 and R-5 districts remain zoned exclusively for residential use in the AZO even when non-residential uses are allowed. While this may be a reasonable interpretation, it does not make the IDOA's interpretation of its own regulations clearly erroneous, arbitrary, or unreasonable. "If reasonable readers of a statute could differ over the extent of the regulatory authority it confers, we defer to

the agency's interpretation if the interpretation is defensible." *Quality Saw and Seal, Inc. v. Illinois Commerce Com'n*, 374 Ill. App. 3d 776, 782 (2007). That rule holds true even if the agency only recently arrived at the interpretation. *Id.*

¶ 36 Based on the foregoing, we reverse the trial court's November 30, 2017, order finding the award of the cultivation center permit to Curative to be clearly erroneous. The IDOA's interpretation that zoning districts R-1 and R-5 are not "exclusively residential" as defined by its own rules and, therefore, the Act, is a reasonable interpretation based on the administrative record in this case. We will now move on to Curative's contention that the trial court erred in finding that their application was not protected by the confidentiality provisions of the Act.

¶ 37 Curative argues that the confidentiality provisions of the Act are clear and unambiguous, thus requiring the seal of the administrative record containing their application. When construing a statute, this court's primary objective is to ascertain and give effect to the legislature's intent. *People v. O'Brien*, 197 Ill. 2d 88, 90 (2001). We begin with the language of the statute, which must be given its plain and ordinary meaning. *Id*. Where the language is clear and unambiguous, we will apply the statute without resort to further aids of statutory construction. *Id*. at 90-91. One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole. *Id*. at 91. Words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute. *Id*.

¶ 38 Section 145 of the Act states in relevant part:

> "(a) The following information received and records kept by the Department of Public Health, Department of Financial and Professional Regulation, Department of Agriculture, or Department of State Police for purposes of administering this Act are subject to all applicable federal privacy laws, confidential, and exempt from the Freedom of Information

Act, and not subject to disclosure to any individual or public or private entity, except as necessary for authorized employees of those authorized agencies to perform official duties under this Act and the following information received and records kept by Department of Public Health, Department of Agriculture, Department of Financial and Professional Regulation, and Department of State Police, excluding any existing or non-existing Illinois or national criminal history record information as defined in subsection (d), may be disclosed to each other upon request: ***

(2) Applications and renewals, their contents, and supporting information submitted by or on behalf of cultivation centers and dispensing organizations in compliance with this Act, including their physical addresses. ***

(c) It is a Class B misdemeanor with a $1,000 fine for any person, including an employee or official of the Department of Public Health, Department of Financial and Professional Regulation, or Department of Agriculture or another State agency or local government, to breach the confidentiality of information obtained under this Act.

(d) The Department of Public Health, the Department of Agriculture, the Department of State Police, and the Department of Financial and Professional Regulation shall not share or disclose any existing or non-existing Illinois or national criminal history record information. For the purposes of this Section, "any existing or non-existing Illinois or national criminal history record information" means any Illinois or national criminal history record information, including but not limited to the lack of or non-existence of these records." 410 ILCS 130/145 (West 2016).

¶ 39 Missing from the above language in the Act is any discussion of how a court record is to be handled during an administrative review proceeding. The Act's only mention of the court appears in section 155 which states as follows regarding review of administrative decisions:

> "All final administrative decisions of the Departments of Public Health, Department of Agriculture, and Department of Financial and Professional Regulation are subject to direct judicial review under the provisions of the Administrative Review Law and the rules adopted under that Law. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure." 410 ILCS 130/155 (West 2016).

The Act is silent on whether administrative review in the trial court needs to be conducted with a sealed record. Although the language of section 145 includes confidentiality provisions regarding the IDOA's handling of information contained within the applications filed, including criminal penalty for the breach of confidentiality, it does not follow that the courts are bound to seal or impound materials filed for administrative review.

¶ 40 Curative's contention on this issue is limited to the scope of the Act. It is worth noting here that in its finding that the language of the Act does not compel the court to seal the entire administrative record, the trial court went to great lengths in a 25-page memorandum opinion and order to detail what information was ordered to be redacted from the public record in relation to the applications filed with the IDOA by both Curative and Medponics. As noted earlier in this disposition, but more detailed here, the trial court allowed redaction of (1) private and personal identifying information; (2) criminal history checks and results thereof; (3) bank account numbers; (4) trade secrets and proprietary information regarding production, quality control and marketing plans; (5) trade secrets and proprietary information regarding the specific design and

physical layout of production facilities; (6) security plans; (7) transportation and delivery plans and procedures; and (8) money handling policies and procedures.

¶ 41 The United States Supreme Court acknowledged a common law presumption that the public has a right to "inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978). In Illinois, our legislature codified that right in section 16(6) of the Clerks of the Courts Act:

> "All records, dockets and books required by law to be kept by such clerks shall be deemed public records, and shall at all times be open to inspection without fee or reward, and all persons shall have free access for inspection and examination to such records, docket and books, and also to all papers on file in the different clerks' offices and shall have the right to take memoranda and abstracts thereto." 705 ILCS 105/16(6) (West 2016).

However, the public's right of access is not absolute. *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 231 (2000). "Every court has supervisory power over its own records and files, and access [may be] denied where court files might become a vehicle for improper purposes." *Skolnick*, 191 Ill. 2d at 231; quoting *Nixon*, 435 U.S. at 598. Thus, whether court records in a particular case are opened to public scrutiny rests with the trial court's discretion, which must take into consideration all facts and circumstances unique to that case. *Skolnick*, 191 Ill. 2d at 231.

¶ 42 In this case the trial court recognized the importance of shielding large swaths of the administrative record from public view in order to protect the parties' interests. The trial court also allowed the parties to enter into an agreed protective order to ensure access to all material provided. We take no issue with the trial court's discretion on this issue and find nothing in the Act that supports Curative's contention that the trial court erred in finding that their application was not protected by the confidentiality provisions of the Act. Therefore, we affirm the trial

court's order granting, in part, and denying, in part, the motion for leave to file the administrative record under seal.

¶ 43 Based on our reversal of the trial court's administrative review findings, we need not reach Curative's remaining contentions. Additionally, as a result of our reversal, we dismiss the City of Aurora's appeal concerning the denial of their petition to intervene as moot.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we reverse the judgment of the circuit court of Lake County and affirm the decision of the Illinois Department of Agriculture.

¶ 46 Reversed in part, affirmed in part, dismissed as moot in part.

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

MEDPONICS ILLINOIS, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY

Plaintiff

vs.

15 MR 2061

ILLINOIS DEPARTMENT OF AGRICULTURE; RAYMOND POE, DIRECTOR OF THE ILLINOIS DEPARTMENT OF AGRICULTURE; AND JACK CAMPBELL, CHIEF OF THE BUREAU OF MEDICINAL PLANTS OF THE ILLINOIS DEPARTMENT OF AGRICULTURE, AND CURATIVE HEALTH, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY,

Defendants

ORDER

IT IS HEREBY ORDERED THAT:

The Court, having heard oral argument by all parties and conducting an Administrative Review hearing, hereby sets aside the award of the District 2 license/permit to Curative Health, LLC (hereinafter "Curative") for the following reasons:

The Court understands that as an administrative agency, the IDOA is to be given significant or substantial deference in its rulemaking and interpretation of its rules.

Insofar as the IDOA has approved Rules 8 IL ADC 1000.10 and 1000.100 purporting to interpret the phrase defining areas "zoned for residential use" as cited in 410 ILCS 130/105(c), while the Rules seem to expand the phrase, the Court does not find that the IDOA rules are improper or clearly erroneous. Although it has been suggested the rules go too far, this has not been argued by Medponics. Therefore,

the court is accepting these IDOA rules as they are set forth; the Court does not find that the rules are clearly inconsistent with Sec. 130/105(c).

However, this Court finds that, as a matter of mixed law and fact, that the State and Curative's interpretation and application of the statute and IDOA's own rules, to the extent they believe the setback rule only applies to areas where ***nothing*** but residences are permitted is clearly erroneous.

The rule itself defines an "Area zoned for residential use" as "an area exclusively zoned for residential use." All parties agree the Curative site is within 2500 feet of the R1 and R5 areas zoned for residential use. The City of Aurora has defined R1 and R5 as exclusively residential and simply because it allows special uses and special use permits, the areas are still "zoned exclusively for residential purposes" even though this designation permits certain special uses. These areas remain exclusively residential, and by the very terms of the IDOA's rule, the Curative facility could not be within 2500 feet of areas zoned as exclusively residential.

Neither the Act nor the Rule states "areas zoned for residential use, unless there is a special use allowed." Curative and IDOA's position is illogical and does not fit the plain meaning of the statute nor does is it consistent with the purpose of the setback provision in the statute and the rules. The mere fact that hospitals, cemeteries, etc. may be granted special use permits in the "exclusively residential use" zones does not take these areas out of the purview of the Act or the rules.

As such, the R1 and R5 zoning areas in Aurora, agreed by all parties to be within 2500 feet of the proposed Curative center, are hereby found by the Court to be "areas zoned exclusively for residential use" and therefore the proposed Curative site violates both the statute and Section 1000.10 of the rules.

As such, awarding Curative the license for the site was improper, and violates both the statute and IDOA's own rules as R1 and R5 are "areas zoned exclusively for residential use."

The award of the license to Curative is therefore clearly erroneous; the Court has the definite and firm conviction that a mistake has been made.

PART II

The Court finds that it does not necessarily follow that because Curative does not qualify for the license, that Medponics is to be awarded the license, although the Court acknowledges that the time and expense expended by Medponics was instrumental in bringing this action. Rule 8 IL ADC 1000.40(d) specifically indicates that, in case an awardee forfeits a permit, the permit shall be awarded to the next qualified applicant in terms of points. While there is no "forfeiture" per se, to the extent Curative is disqualified, this case is to be remanded for rescoring, and re-

evaluation of the qualifications of all of the applicants by the IDOA as well as a reassessment of the award in District 2.

Since the Court has no evidence as to whether the other applicants' proposed locations are located within 2500 feet of an area zoned exclusively for residential use, the Court orders that IDOA follow the Court's above interpretation of the setback rule and orders the IDOA to reorder and reassess the applications of all applicants based on the 2500 foot setback.

The Court is not directing IDOA to award the license to any applicant. But if there is a qualified applicant after rescoring, the IDOA may award the license or permit to that applicant, if appropriate, following the IDOA's review and scoring criteria.

The IDOA and Curative are further ordered to file both the sealed and redacted versions of the administrative records within 14 days.

The Court hereby continues this matter for 21 days, or until 9/14/17, for entry of a final order. If the records have been filed, as ordered, the Court will enter an order making this decision final and appealable. In the meantime, the Court retains jurisdiction over all issues.

SO ORDERED.

ENTER: _____
Judge Michael J. Fusz

Dated this 24th Day of August 2017 at Waukegan, Illinois.

8/24/17
6:00pm

C 3723 V2

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

FILED
NOV 30 2017
Eric Carmichael Weinstein
CIRCUIT CLERK

MEDPONICS ILLINOIS, LLC, an Illinois Limited Liability Company,	)	
Plaintiff,	)	
v.	)	Case No. 15 MR 2061
ILLINOIS DEPARTMENT OF AGRICULTURE, RAYMOND POE, Director of the Illinois Department of Agriculture, JEFFREY G. COX, Chief of the Bureau of Medicinal Plants of the Illinois Department of Agriculture, and CURATIVE HEALTH CULTIVATION, LLC, an Illinois Limited Liability Company,	)	Judge Michael J. Fusz
Defendants.	)	

FINAL ~~JUDGMENT~~ ORDER

THIS MATTER COMES FOR HEARING on Medponics' Motion for Final Order and Curative's Motion for a Rule 304(a) Finding and Motion for Stay of Judgment, the parties appearing by their counsel of record, the Court hereby finding as follows: 1) On November 14, 2017, Defendant, ILLINOIS DEPARTMENT OF AGRICULTURE ("IDOA"), filed of record its Supplemental Answer/Record, as directed by the Court in its Order entered on November 3, 2017; 2) With the filing by the IDOA of the Supplemental Answer/Record, the administrative record in this matter is now complete and all substantive motions/petitions have been resolved; 3) As a remand to the IDOA has been ordered, this ~~judgment~~ order may not be final as to all parties, so an express written finding that there is no just reason for delaying either the enforcement or appeal or both of this judgment is appropriate, pursuant to Supreme Court Rule 304(a), as this judgment is final in all respect as to Defendant, CURATIVE HEALTH CULTIVATION, LLC ("Curative"); 4) This nonmoney judgment striking the IDOA's administrative decision awarding a cultivation

C 5481 V5

center permit to Curative presents an issue of first impression concerning an important setback issue pursuant to the provisions of the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 5/130 *et seq.* (the "Act") and the rules of the IDOA implementing the Act, which may have far-reaching effects on the siting of cultivation centers across the state, so a stay of the enforcement of the judgment entered herein, pending appeal from the judgment, is equitable and just, without a bond from any party, pursuant to Supreme Court Rule 305(b); and 6) Being fully advised of the premises;

5) The relief provided in Sections A, B and D below is entered over the objection of the IDOA.

IT IS HEREBY ORDERED:

A. Final judgment, pursuant to the terms of the Court's order entered in this cause on August 24, 2017, is entered against Defendants, effective the date of this order.

B. Enforcement of the nonmoney judgment entered herein is stayed pending determination of any appeal from this judgment, pursuant to the provisions of Supreme Court Rule 305(b), without the necessity of a bond from any party.

C. All parties shall pay their own attorney's fees and costs.

D. There is no just reason for delaying either enforcement or appeal or both of this judgment, pursuant to Supreme Court Rule 304(a).

ENTER:_____

JUDGE

11/30/17

10:32 am

THIS ORDER PREPARED BY:

William F. Moran III (#06191183)
Stratton, Moran, Giganti, Reichert,
Sronce & Appleton
725 South Fourth Street
Springfield, IL 62703
Telephone: 217/528-2183
Email: bmoran@stratton-law.com
Counsel for Curative Health Cultivation, LLC

C 5482 V5

City of Aurora

Planning and Zoning Division
Development Services Department

Mailing Address: 44 E. Downer Place • Aurora, IL 60507-2067
Office Location: 1 S. Broadway • Aurora, IL 60505
Phone: (630) 256-3080 • Fax (630) 256-3089

Stephane A. Phifer, AICP
Director

April 29, 2015

Mr. Craig Sondgeroth
General Counsel
Illinois Department of Agriculture
P.O. Box 19281
Springfield, Illinois 62794-9281

RE: Aurora Non-"Exclusively Residential" Zoning near Curative Health Cultivation, LLC at 2229 Diehl Road, Aurora, Illinois.

Dear Mr. Sondgeroth:

The Department of Agriculture is charged with registering and regulating up to 22 cultivation centers allowed in the law. The Department of Agriculture Administrative Rules were approved by the JCAR committee on July 15, 2014. In Section 1000.10 of the Administrative Rules, defines an "Area zoned for residential use" as:
"an area zoned exclusively for residential use; provided that, in municipalities with a population over 2,000,000 people, "an area zoned for residential use" means an area zoned as a residential district or a residential planned development." (http://www.agr.state.il.us/pdf/mcppadminrules.pdf)

The definition set forth in the Administrative Rules raised the obvious question as to what constituted an *"an area zoned exclusively for residential use"*. On August 25, 2014, the Illinois Department of Agriculture released a Frequently Asked Questions document that addressed this question as follows:

"The definition of "area zoned residential" is an area zoned "exclusively residential." If the local municipality provides a letter that its zoning districts located within 2500 feet of a cultivation center are not zoned "exclusively" residential because in addition to residential uses, the zoning districts allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses including commercial uses, will that satisfy this requirement?
Yes, but the applicant must verify setback regulations are also met, located in Department of Agriculture Administrative Rules section 1000.40(e). The Department will rely heavily on the local zoning authority's approval." (page 3 http://www.agr.state.il.us/pdf/mcppfaq.pdf)

Aurora's Zoning Code does allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses in a residential district. This is clearly laid out in Table 1 of Aurora Zoning Ordinance titled Use Categories, (https://www.aurora-il.org/documents/planning/ordinance/tbl_1_use_categories.pdf). Specifically, this includes the R-1 Zoning District of the nearby Harris Farms and Palomino Springs subdivisions located south of the Prairie Path, the Stonebridge Subdivision zoned PDD with underlying R-1 Zoning, and the R-1 and R-S Zoning Districts of the East View Estates Subdivision to the west.

EXHIBIT
tabbies
C

C 5271 V5

Please contact me at (630) 256-3080 if you have any questions.

Sincerely,

Edward T. Sieben
Zoning Administrator
City of Aurora

Cc: David Hulseberg: Seize the Future Development Foundation
Craig Burkhardt: Barnes & Thornburg LLP

C 5272 V5

Illinois Department of Agriculture – Medical Cannabis Pilot Program
Frequently Asked Questions
2-18-15

Please Note: All references to the Act refer to the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/1 et. seq.) and all references to the Department rules refer to the Compassionate Use of Medical Cannabis Pilot Program regulations found at 8 Ill. Adm. Code Part 1000.

Who will be administering the registration for the program?
The Department of Agriculture will be awarding up to 22 permits to grow and cultivate.
The Department of Financial and Professional Regulation will be issuing up to 60 permits to dispense.
The Department of Public Health will be in charge of the patient and caregiver registry.

Where can I get a copy of the Act?
You find the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130, the "Act") on the Illinois General Assembly's website at:
http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3503&ChapterID=35.

Is it currently legal to grow medical cannabis in Illinois?
No. It is not legal at this time for anyone within the State of Illinois to be growing cannabis for any purpose. Only licensed cultivation centers will be allowed to grow cannabis under Illinois law. Growing cannabis for any purpose is still illegal under federal law.

Can I put my name on a list of individuals interested in growing cannabis?
No.

Will I be able to grow cannabis at home when the program is implemented?
No, unlike some other states, the Compassionate Use of Medical Cannabis Pilot Program Act ("the Act") does not permit home-grow of cannabis. Only a registered cultivation center will be allowed to grow medical cannabis.

I would like to apply for a Cultivation Center permit. How do I proceed?
Once available, the application will be posted on the Department of Agriculture's website (agr.state.il.us) *and the Medical Cannabis Pilot Program's website* (mcpp.illinois.gov). *Please read the administrative rules to familiarize yourself with the program components and check with Medical Cannabis Pilot Program website for additional application instructions.*

What are the fees associated with applying for a cultivation permit?
$25,000 nonrefundable application fee for a cultivation permit. If issued a cultivation center permit, $200,000 permit fee for the first year, $100,000 annually thereafter.
All other fees can be found in Administrative Rules Section 1000.140.

How can I pay my application fee?
Certified Check or Money Order payable to the Illinois Department of Agriculture.

How will the Department make sure that the applications are reviewed fairly and impartially?
Department of Agriculture will have a review committee in place, considering de-identified applications on a merit based system that is detailed in the Department's Administrative Rules and in the Application materials.

How soon will the Department issue award permits?
Timing on the permit selection will greatly depend on the amount of applications the Department receives.

I was told that the application document would be posted online 30 days prior to the application window opening, but have heard the window might have changed to 15 days prior to the application window opening?
The application will be posted online prior to the Department accepting applications. We anticipate accepting cultivation center applications from September 8 through September 22, 2014. Once the application submission window begins, the Department will allow 14 days for applicants to submit all required materials.

Will an applicant need to have firm funding commitments that will be effective post-licensure? Will those types of agreements be viewed as compliant with application requirements or does all funding need to be held in an escrow account?
Section 1000.40 (1) (B) in the Department of Agriculture's rules states the applicant has 15 business days after being awarded a permit to provide a copy of the $2,000,000 bond to the Department of Agriculture. They must demonstrate the ability to do so in their application.

Can a company applying for more than one cultivation license use the same research plan for both licenses, or should there be a separate research plan for each license?
The Department does not have a position on what level of information an applicant chooses to include in their application. It is the applicant's responsibility to provide the best possible application for review.

I have 20 acres of property to be used for a cultivation center, could I split off 5 acres of that and use it and build a separate building and place a dispensary on that parcel next to the cultivation center?
Section 1000.220 of the Department of Agriculture's rules states a cultivation center and dispensary are required to be at least 1,000 feet apart. However, Section 1000.70 allows for a variance from this rule when certain requirements in the rule are met.

What if no qualified applicant applies in an ISP district, will the Department re-open the application phase?
Yes.

Will the Department notify applicants when their application is denied?
Yes. The Department of Agriculture will send notification to the applicants who are denied.

Will the Department allow applicants to apply for ISP District 15 if we believe we located a plot of land on the Illinois Tollway that would work?
Applications to operate a cultivation center in ISP District 15 will be evaluated the same as applications for all other districts.

Do the rules address where initial seeds/clones can come from?
No.

Can a cultivation center sell excess cannabis to other cultivation centers?
No. Cultivation centers can only sell cannabis products to dispensaries.

Can cultivation centers sell compost made from waste cannabis?
No. All cannabis waste must be rendered unusable and transported to a solid waste facility for final disposition. Please see section 1000.460 in the Department of Agriculture's rules for more information.

Can I operate a Cultivation Center and a Dispensary Organization?
Yes. An applicant may have ownership in up to three (3) cultivation centers and five (5) dispensaries. For further information please see Section 1000.40 (d) in the Department of Agriculture's rules, and Section 1290.40 (13) in the Department Financial and Professional Regulation's rules.

Will we need to use a specific IT vendor or system?
The administrative rules state the cultivation centers will need to use an inventory system that is compatible with the system the state procures. The state has not yet selected a vendor for product tracking purposes.

Will we need to use a specific security vendor/system?
No. The administrative rules do not require a cultivation center to use a specific security vendor or system. It will be the responsibility of the cultivation center to have the best security possible for their business.

I am applying for more than one cultivation center permit. Do I need to provide verification of $500,000 liquid assets and $2,000,000 in bond or escrow for each application?
Yes. The financial requirements were developed to provide proof of financial responsibility for the operation of a single Cultivation Center. Each Center is looked at as a unique entity and therefore the funds would need to be verified and available for each center.

I am having trouble securing a surety bond. Does the Department of Agriculture have a list of institutions that will issue surety bonds for $2,000,000?
There is a list of institutions licensed with the State of Illinois to issue surety bonds posted on the Program's website. However, each institution has discretion as to whether to issue a surety bond to cultivation centers.

The definition of "area zoned residential" is an area zoned "exclusively residential." If the local municipality provides a letter that its zoning districts located within 2500 feet of a cultivation center are not zoned "exclusively" residential because in addition to residential uses, the zoning districts allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses including commercial uses, will that satisfy this requirement?
Yes, but the applicant must verify setback regulations are also met, located in Department of Agriculture Administrative Rules section 1000.40(e). The Department will rely heavily on the local zoning authority's approval.

If a town only has one area that meets the zoning and setback requirements for a cultivation center can they wait until the permits are issued and lease the land to the company with a permit?
Yes. The zoning authority will need to provide written verification the property meets the requirements of the Act and rules with the application.

Can our zoning be in process when we submit an application?
Yes. The application will include a zoning form where the applicant can provide verification of completed zoning or a statement from the local zoning authority stating the zoning is in process.

Will the state allow the "variances" rules to be used for the 2,500 foot distance?
No. The 2,500 foot distance is mandatory based on Section 105 of the Medical Cannabis Pilot Program Act.

Do I need a zoning approval letter in my application?
You will need to provide verification of zoning approval or a statement provided in the application from the local zoning authority verifying the zoning process is underway and the property meets all requirements set forth in the act and rules.

How does the Department of Agriculture approve a testing laboratory?
A laboratory wishing to test medical cannabis will apply with the Department and provide verification they are accredited by a private laboratory accrediting organization. Applications will be posted on this website when they are available.

Will the Department have its own lab? How many private independent labs will there be?
Yes, the Department of Agriculture will have a lab to test samples of cannabis collected at cultivation centers. Private independent labs wishing to test cannabis can apply with the Department of Agriculture when forms are available. For more information on Laboratory testing and requirements please see the Department of Agriculture Administrative Rules, section 1000.500.

Will veterans receive a preference in the permit selection process?
Bonus Points are available for organizations that employ or are owned by Veterans. 1000.110 (c)(1) (b) and 1000.110 (c) (7)

Your Administrative Rules say the Illinois State Police ("ISP") needs to review all security plans before application submission. Is this necessary?
The applicant must submit their security plan with their application. The Department will work with ISP to make sure a full security review is completed.

I want to add more security than your rules say is mandatory. Will I receive fewer points on the application if I go beyond the rules?
No. The rules serve as a broad outline of the program and its features. It is up to the applicant to be innovative and provide the best business and security plan possible in the application process. Applicants are encouraged to exceed the minimum requirements where possible.

How will Cannabis be transported from Cultivation Centers to Dispensary Organizations?
Each Cultivation Center will hire Cultivation Center Agents, subject to background checks, to transport cannabis from the Cultivation Center to the dispensaries. Each Cultivation Center will provide the

Department of Agriculture with a transportation plan that adheres to the rules located in section 1000.430

A product has to be packaged from cultivation center to dispensary, does this mean that it has to be maintained in that package or can it be repackaged at the dispensary?
All products must be packaged and labeled before transport to a dispensary. Please refer to the Department of Financial and Professional Regulation's administrative rules regarding product handling.

"All applicant's principal officers and producer backers expressly agree to be subject to service of process in Illinois with a current Illinois address on file with the Department". Does this mean the cultivation center must be located in illinois as well as all officers and backers?
Cultivation centers will be permitted based on Illinois Police District and need to be physically located in the District they are permitted to grow in. Owners and backers do not need to live in the state of Illinois.

If a physician commits to giving up his or her license to practice in the State of Illinois, can we include him in our application?
The Act defines "Physician" as a doctor of medicine or doctor of osteopathy licensed under the Medical Practice Act of 1987 to practice medicine and who has a controlled substances license under Article III of the Illinois Controlled Substances Act. Therefore, if the individual is NOT licensed under the Medical Practice Act of 1987 to practice medicine, then he/she can be included in the application.

In the definition of "usable cannabis," it mentions that the roots and stocks are unusable. There are many studies linking the juicing of cannabis roots and stocks. If a cultivation center were to juice the stocks and roots is that admissible under these rules?
This would be an example of a cannabis-infused product which may be produced under the Act and rules.

Do background checks need to be done by livescan or can they be done by fingerprint card?
All fingerprints need to be collected at a livescan vendor licensed by the Illinois department of Financial and professional Regulation. A list of vendors can be found at this website: https://www.idfpr.com/licenselookup/fingerprintlist.asp . Please bring the Fingerprint consent form with you to the vendor, complete, and return with your application.

Is the Department permitting out of state residents to submit fingerprints to the ISP through fingerprint cards you send in the mail?
No. All fingerprints must be obtained in the State of Illinois from a livescan vendor licensed through the Department of Finical and Professional regulation.

Is there a specific bond form that the Illinois Department of Agriculture is requiring the bond to be created on and if so would you be able to send me a copy of the bond form? If there is not a specific bond form, would a standard license and permit bond form be acceptable at this time for the surety bond?
The Department has developed a bond form to make the insurance process easier. If the applicant chooses to use the bond as its evidence of financial responsibility, it must use this form. Please see the form section for a copy of the surety form.

What portions of the application will be accessible to the public via a website or FOIA request, specifically will the names, addresses and financial information of the applicants, producer backers, or any entity with a direct or indirect pecuniary interest in the center be accessible to the public?

No. Section 145 of The Act provides that information in the application received by the Department is subject to all applicable federal privacy laws, is confidential, exempt from the Freedom of Information Act and not subject to disclosure to any individual or public or private entity except among the licensing agencies and with law enforcement for the enforcement of the provisions of the Act.

Can a cultivation center "donate" compost or use compost in a Community Development Program to build community gardens and farms?
No. Compost must be disposed of in the manner described in the Department of Agriculture Administrative Rules, 1000.460(g).

I would appreciate verification on the requirements for Substance Abuse Programs for Cultivation Centers and whether the program must be based or located within the district being applied for, or if programs in other districts throughout the state would also be considered for bonus points.
It is the applicant's responsibility to provide the best application possible to the department. It is up to the applicant to decide what type of substance abuse program, if any, they choose to include in their application.

Can you tell me whether there is any prohibition for a Cultivation Facility being located in a B-2 Community Retail District vs., for example, being located in an I-1 Industrial District?
Please check with your local zoning authority for questions regarding local zoning regulations.

Could you please point me in the right direction to find the security regulations for permitted growing operations?
Please see Department of Agriculture Administrative rules Section 1000.445 and 1000.450.

The Department rules indicate the cultivation center needs to notify the Department in the case of theft/loss, provide manifests, and gain approval for visitors. Do you have an appropriate phone number and email address we can use and incorporate into our security, operations, and employee manuals?
The department will provide all needed phone numbers and addresses to permitted cultivation centers.

Assuming a Doctor is not and will not be recommending medical marijuana to patients nor have interest direct or indirect interest in a facility that does. Can they been on an advisory committee, with NO compensation or consideration of any kind.
The Act prohibits a physician from serving on the board of directors or as an employee. The rules however permit a cultivation center to hire a physician as an independent contractor limited exclusively for the purpose of designing or conducting non-proprietary medical research or studies. The Act and the rules are silent on a physician participating on an advisory board without compensation. See Section 1000.40(b)(10) and (11) of the rules.

What information other than the cultivation center name and content list can be on the Label? Can a cultivation center label medical Cannabis for a dispensary?
The rules outlined in section 1000.420 are in place to prevent medical cannabis from resembling foods available for non-medical human consumption or that are attractive to children. The labeling should be straight forward and make the consumer aware this is a medical product. The label for a medical Cannabis product must include the registered product name. The Department has no objection to a cultivation center placing information about the dispensary on the label.

Who needs to be fingerprinted in the application process?
All cultivation center agents are required to be fingerprinted, which includes a, principal officer, board member, employee or agent of a cultivation center. See Sections 1000.210 and 1000.300.

Can a qualifying patient be a producer backer of a cultivation center?
Yes, there is no specific prohibition against that in the Act or rules. Such a qualifying patient would have to be disclosed in the cultivation center application. Additionally, the rules state that a qualifying patient cannot grow or cultivate medical cannabis other than as a cultivation center agent, meaning a qualifying patient can work at a cultivation center. Section 1000.50 (b)(7).

Can ownership of a cultivation center be by a trust if the beneficiary(s) are under 21 years of age?
Such a situation would be judged on a case by case basis, depending upon the terms of the trust and how much control and benefit is available to the beneficiary while under 21. If the under 21 year old beneficiary would qualify as a principal officer or board member of the cultivation center, such ownership would be prohibited under the Act and the rules.

Does a producer backer have to file tax returns for the last 3 years or just the most recent filing?
Unless a producer backer who has a direct or indirect financial interest in the cultivation center, is also a principal officer, only the most recent tax filing is required by Section 1000.200(a)(8), (9).

Can a cultivation center operate a surveillance system that is at least comparable to, if not better than, a closed-circuit television (CCTV) surveillance system required by Section 1000.445 of the rules, if the system also meets the listed minimum standards?
Yes. Technology is ever changing and a system that meets at a minimum the listed standards will be accepted. It is up to the applicant to put forth its best plan in all areas of the application.

Is there any other documentation acceptable to the Department attesting to the existence of at least $500,000 in liquid assets under the control of the applicant, besides a signed statement from an Illinois Licensed CPA?
Yes. In addition to the CPA statement required in Section 1000.100(d)(21) of the rules, the Department will accept a signed statement from a Financial Institution authorized to do business in Illinois.

Each independent lab is to be accredited by a private laboratory accrediting organization. How will the labs know which accrediting organization to use?
The Department recommends an interested lab reach out to labs that are currently testing cannabis in other states to gather information about the process and accrediting organizations. The lab should then contact the Department for approval. The Department will be posting a lab approval application in the near future. Please check the Medical Cannabis Pilot Program website for the update.

What type of physical facility does the AGR require or prefer to locate a cultivation center for cannabis to be grown?
Cultivation centers must be enclosed, locked facilities. Please see 410 ILCS 130/10(k) of the Compassionate Use of Medical Cannabis Pilot Program Act. Additionally, the rules of the Department in various sections set forth the requirements of the proposed facility.

Is the program application requiring shovel ready plans (complete construction documents) with the application or are concept plans with the parameters listed in the 'draft' acceptable?
All plans for the cultivation center must comply with the requirements of Sections 1000.100(d)(19) and (20) and Section 1000.220. Also see Section 1000.40(g) which requires that proof of financial responsibility, in part, is to insure that construction of the proposed cultivation center and commencement of production must take place within 6 months after the issuance of a permit.

I do not see any reference to MEP engineering (Mechanical, Electrical, Plumbing, Fire Protection). Will this level of detail be required within the application, or will elevation drawings be the extent of engineering which will be required?
Please see Department of Agriculture Administrative rules sections, 1000.400 (j)(8), 1000.400 (j)(9) and 1000.40(h) and 1000.220(b).

Before product including edibles can be packaged and labeled and sent to a dispensary does it have to be tested by an Independent Lab approved by the State? Can the product be tested but while waiting for results still shipped to a dispensary and if there is an issue than a recall would be constituted?
Each batch of cannabis is to be made available by the cultivation center for an employee of an approved lab to select a random sample for testing by the lab. Each cannabis product is required to be packaged and labeled by the cultivation center prior to being sold to a dispensary. If the cannabis product is derived from a batch of cannabis that was sampled by the independent lab, the label is required to include identification of the independent testing laboratory and the date of final testing and packaging. Qualified patients will thus be able to identify those cannabis products that came from batches of cannabis that were sampled and tested. Please see Sections 1000.420 and 1000.510.

Assuming a Doctor is not and will not be recommending medical marijuana to patients nor have a direct or indirect interest in a facility that does, can the doctor own a percentage of a cultivation company (as long as they don't sit on a board of directors, or hold titles such as president, ceo etc)?
Yes. As long as the physician does not recommend the use of medical cannabis to qualified patients or is not in partnership or other fee or profit sharing relationship with a physician who does recommend medical cannabis, a physician can hold a direct or indirect economic interest in the cultivation center. By owning a percentage of the cultivation center the physician would have an economic interest in the center. See Section 1000.40(b)(10).
Additionally, a physician may not serve on the board of directors or as an employee of a cultivation center. See Section 1000.40(b)(11).

Will an applicant-entity receive less bonus points by having the entity incorporated in Delaware as opposed to Illinois, even if an entity's headquarters and operations are located in Illinois and the entity is qualified to do business in Illinois?
1000.110(c)(8) states: Verification that the applicant's principal place of business is headquartered in Illinois. The names, addresses and verification of the applicant's proposed agents that reside in Illinois. The applicant may also provide a plan for generating Illinois-based jobs and economic development. There is no requirement that the entity be incorporated in Illinois.

Does the state have an approved surety bond form that can be used as proof of financial security?

Yes. Since the proof of financial responsibility relates to both the construction of the cultivation center and the production of medical cannabis, 2 bond forms have been created.
The first bond form covers the construction of the cultivation center, is in the amount of $2,000,000 and becomes null and void upon completion of the construction of the cultivation center and the commencement of production of medical cannabis.
The second bond form covers the production of cannabis and does not become effective unless and until the first bond becomes null and void. It is in the amount of $1,500,000 because the rules provide for a reduction of the required proof of financial responsibility, in $500,000 increments, upon achieving certain milestones, the first one being completion of construction and the commencement of production.
Since the second bond form does not become effective until the first bond becomes null and void, the total surety bonding liability remains $2,000,000, not $3,500,000.
It is also noted that proof of financial responsibility may also be submitted in the form of an escrow account in a chartered financial institution in Illinois. See Sections 1000.40(g) and 1000.60.

What terms must be included in the escrow agreement?

Although the Department will not be providing a sample escrow agreement, the following terms must be included in any escrow agreement submitted to the Department pursuant to the rules:

1. Escrow Agent shall not return any money in the escrow account to Permittee or a representative of Permittee unless Permittee or its representative presents a written statement issued by the Department indicating that the account, or any amount thereof, may be released.

2. Written consent of Escrow Agent to act in the capacity of escrowee shall be manifested upon the duly authorized execution of this Agreement. At the Illinois Department of Agriculture's ("Department") discretion, statements indicating the status of the escrow account shall be furnished by Escrow Agent to the Department.

3. THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the Department determines, after a hearing pursuant to Section 1000.700 of the rules of the Department (8 Ill. Adm. Code 1000.700), that the Permittee has failed to: (1) timely and successfully construct a cultivation center that is fully operational and commence production of medical cannabis as provided for in the permit application of the Permittee within six (6) months after the date of issuance of the permit; or (2) maintain production for any reason for more than ninety (90) consecutive days after it has completed construction of the facility; or (3) provide an uninterrupted supply of medical cannabis to licensed dispensaries during the term of the license, as provided for in Sections 1000.40(g) and 1000.240 of the rules of the Department (8 Ill. Adm. Code 1000.40(g) and 1000.240), then the Escrow Agent shall immediately make payment of the above escrow amount, or any amount remaining in the escrow account, to the Department. The total sum of the escrow amount shall be reduced by $500,000 upon the successful achievement of each of the following milestones by the Permittee, as provided for in Section 1000.60 of the rules of the Department (8 Ill. Adm. Code 1000.60):

a) A determination by the Department that the cultivation center is fully operational and able to commence production of cannabis as provided for in the permit application of the cultivation center;
b) A determination by the Department that the cultivation center remained operational without substantial interruption, was able to provide an uninterrupted supply of medical cannabis to licensed dispensaries and operated without any violation of the Act or the rules for a one year period;
c) A determination by the Department that the cultivation center remained operational without substantial interruption, was able to provide an uninterrupted supply of medical cannabis to licensed dispensaries and operated without any violation of the Act or the rules for two consecutive years; and
d) A determination by the Department that the cultivation center remained operational without substantial interruption, was able to provide an uninterrupted supply of medical cannabis to licensed dispensaries and operated without any violation of the Act or the rules for three consecutive years.

FURTHERMORE, THE CONDITIONS OF THIS ESCROW ACCOUNT ARE SUCH THAT if:

1. The Department determines that the cultivation center has timely and successfully met its obligation to construct a cultivation center that is fully operational and has commenced production of medical cannabis as provided for in the permit application of the Permittee within six (6) months after the date of issuance of the permit, remained operational without substantial interruption, was able to provide an uninterrupted supply of medical cannabis to licensed dispensaries and operated without any violation of the Act or the rules for three consecutive years; or
2. The Permittee voluntarily chooses not to renew the permit and provides notice of this decision to the Department in accordance with 8 Ill. Adm. Code 1000.600; or
3. Should the sunset provision of the Act, found in Section 220 of the Act (410 ILCS 130/220), take effect and no successor medical cannabis program be in place allowing for the continuation of cultivation centers as provided for in the Act and the rules, provided the cultivation center is not in violation of the Act or the rules,

then, the obligation of the bond shall be null and void. Until such time, it shall remain in full force and effect.

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APPELLATE COURT 2ND DISTRICT

2-17-0977

Nos. 2-17-0977, 2-18-0013 and 2-18-0014

IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

MEDPONICS ILLINOIS, LLC, an Illinois Limited Liability Company, Plaintiff-Appellee, vs. ILLINOIS DEPARTMENT OF AGRICULTURE, RAYMOND POE, Director of Illinois Department of Agriculture, JEFFREY G. COX, Chief of the Bureau of Medicinal Plants of the Illinois Department of Agriculture, Defendant-Appellants, CURATIVE HEALTH CULTIVATION, LLC, an Illinois Limited Liability Company, Defendant-Appellant, CITY OF AURORA, an Illinois Municipal Corporation, Proposed Intervenor-Appellant.	Appeal from the Nineteenth Judicial Circuit, Lake County, Illinois Case No. 15-MR-2061 The Hon. Michael J. Fusz Presiding Judge

BRIEF OF APPELLANT CURATIVE HEALTH CULTIVATION, LLC

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

In relation to R-5 Districts, in addition to the permitted uses related to Multi-Family Dwellings and Religious Institutions, there can be housing for the elderly, home occupations, Minor, Major and Transitional Residences, automated business devices, transportation services, air passenger terminals, rail transportation, parking facilities (residential and non-residential), above ground communication and electric utility facilities, utilities and utility services, alternative energy systems, public drinking water well houses, community centers, public and private golf courses, natural and other recreational parks, educational services (including junior colleges, colleges, universities and trade schools), public facilities and services, health and human services, day cares, nursing, supervision and other rehabilitative services, hospital or sanatoria, mental health facilities, cemeteries or mausoleums, social service agencies, charitable organizations and health related facilities, storm water management facilities, and planned developments. A.41-50.

Aurora's Zoning Ordinance contains specific requirements and regulations for all of the accessory, permitted and special uses detailed above, but it should suffice to say here that just the descriptions of these uses conclusively demonstrates beyond a reasonable doubt that the City's R-1 and R-5 zoning classifications are not "exclusively" residential. In support of this argument, there are in fact municipal zoning ordinances which do describe areas that are exclusively residential. As an example, the Village of North Barrington has R-1, R-2 and R-3 Residential Districts for 5-Acre, 2-Acre and 40,000 square foot residential lots. North Barrington Zoning Ordinance, Sections 10-6-1 (5-Acre), 10-6-2 (2-Acre) and 10-6-3 (40,000 sq. ft.). The "Uses Permitted" are set forth

in Subsection A of each of these sections of the Ordinance. In regard to the R-1 classification for 5-acre lots, the North Barrington uses are described as follows,

> A. Uses Permitted: The only uses permitted are:
>
> "Accessory structure" and "accessory vehicular storage structure", as defined in section 10-2-1 of this title; provided, however, that travel trailers, trucks, buses, hauler trailers, motorized homes and boats of the owners of the premises may be parked on portions of the premises pursuant to the other provisions and restrictions of this title but may not otherwise be used or occupied for any purpose.
>
> Single-family residences, excluding trailers, provided the building plot or lot has a width of at least two hundred (200) contiguous feet at the front lot line, an average width of at least three hundred feet (300') and an area of at least five (5) acres, and said minimum area shall not include any portion of a vacated Village roadway, street or road easement vacated after October 1, 2001. (1977 Code § ZR-5-1; amd. Ord. 874, 9-24-2001).

§10-6-1(A). The permitted uses for the R-2 and R-3 classifications are exactly the same, with the only difference being the size of the lot in each application. §§10-6-2(A) and 10-6-3(A). As such, there are in fact zoning districts in this state which are "exclusively residential," the same are just not located in Aurora

The materials set forth above conclusively demonstrate that the IDOA conscientiously applied the facts and law to Curative's choice of location, and based upon its experience and expertise, awarded the relevant cultivation permit to the appropriate applicant. The IDOA certainly has experience regulating agricultural endeavors involving setbacks. *See, e.g.*, Livestock Management Facilities Act, 510 ILCS 77/1 *et seq.* (setbacks being detailed in §35). Applying the appropriate standard of review to the agency's decision leads to the inescapable conclusion that a mistake has

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Nos. 2-17-0977, 2-18-0013, and 2-18-0014 (consol.)

In the Appellate Court of Illinois - Second Judicial District

MEDPONICS ILLINOIS, LLC, an Illinois Limited Liability Company,

Plaintiff-Appellee,

v.

ILLINOIS DEPARTMENT OF AGRICULTURE, RAYMOND POE, Director of the Illinois Department of Agriculture, JACK CAMPBELL, Chief of the Bureau of Medicinal Plants of the Illinois Department of Agriculture, and CURATIVE HEALTH, LLC, an Illinois Limited Liability Company,

Defendants-Appellants,

and

CITY OF AURORA,

Intervenor-Appellant.

On Appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois

No. 2015-MR-2061

Hon. Michael J. Fusz, Judge Presiding

BRIEF AND APPENDIX OF PLAINTIFF-APPELLEE MEDPONICS ILLINOIS, LLC

Oral Argument Requested

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Table of Points and Authorities

D. IDOA's interpretation of "zoned exclusively for residential use" impermissibly limits the scope of the Act's cultivation center location requirement.

An administrative agency such as IDOA "has only such authority as conferred by statute." *Illinois RSA No. 3, Inc. v. Department of Central Management Services*, 348 Ill. App. 3d 72, 76 (2d Dist. 2004). "Accordingly, the authority of an administrative agency to adopt rules and regulations is defined by the statute creating that authority, and such rules and regulations must be in accord with the standards and policies set forth in the statute." *Wood Dale Fire Protection Dist. v. Illinois Labor Relations Board State Panel*, 395 Ill. App. 3d 523, 527 (2d Dist. 2009) (citation omitted). If an agency promulgates rules that are "beyond the scope of the statute or that conflict with the statute, the rules are invalid." *Id.* at 528 (citation omitted). Moreover, an agency "cannot, through its rulemaking, limit the scope of the statute." *Hadley*, 224 Ill. 2d at 377.

Here, as discussed throughout, IDOA and Curative argue that the Rules' definition of the Act's location requirement "area zoned for residential use" as "an area zoned exclusively for residential use" means an area zoned exclusively for residential use with no special use permits allowed. If IDOA and Curative are correct, then the Act's cultivation center location requirement will only apply in those municipalities that do not allow special use permits in districts zoned exclusively residential instead of in all municipalities in the state.[2] This interpretation thus impermissibly limits the scope of the

[2] Indeed, Curative admits as much in its brief before this Court wherein it argues that some municipal zoning ordinances in Illinois, such as that in the Village of North Barrington, do not permit non-residential special uses within areas zoned exclusively for residential use, concluding that "[a]s such, there are in fact zoning districts in this state which are 'exclusively residential,' the same are just not located in Aurora." (Curative Brf. at 32-33).

Act's cultivation center location requirement and so is clearly erroneous. *Hadley, supra*, is illustrative.

In *Hadley*, the plaintiff inmate filed a class action complaint seeking to enjoin the Illinois Department of Corrections ("DOC") from charging him and other indigent inmates a $2 co-payment for nonemergency medical and dental services. *Hadley*, 224 Ill.2d at 367. Under section 3-6-2(f) of the Unified Code of Corrections (730 ILCS 5/, *et seq.*), an indigent inmate is "exempt" from making the $2 co-payment. *Id.* at 368, 371-373. The DOC's rules, however, stated that the trust funds of indigent inmates were to be charged for the co-payment and that upon release, the inmate could apply for an "indigence exemption" to clear the balance due. *Id.* at 374. The Supreme Court held that the DOC's rule was clearly erroneous because it impermissibly restricted the scope of the statute's indigence exemption:

> DOC's rules effectively exclude inmates serving life sentences from the reach of the statutory exemption. This is so because under DOC's definition of "indigent," no action is taken on the statutory exemption until discharge from the [DOC] – a day that will never arrive for this group of inmates. Section 3-6-2(f) [of the statute], however, contains no exception from the indigence exemption for inmates serving life sentences. The same is true of inmates who have been sentenced to death. An agency cannot, through its rulemaking, limit the scope of the statute.

Hadley, 224 Ill. 2d at 376-377.

Here, IDOA's interpretation of its Rule defining "residential area" under the Act, like DOC's interpretation of its rule in *Hadley*, impermissibly limits the scope of the Act's cultivation center location requirement. Under IDOA's interpretation, the only municipalities in which the Act's cultivation center location requirement applies are those which do not allow special use permits in districts zoned exclusively residential. Like the Unified Code of Corrections in *Hadley*, the Act does not contain such a limitation to the

cultivation center location requirement. IDOA's interpretation of its rule is thus clearly erroneous and accordingly cannot stand.

II. Medponics' application for the ISP District 2 cultivation center permit is the only application which should be rescored.

As discussed *supra* in the Statement of Facts, the circuit court ordered that all applications for the ISP District 2 cultivation center permit (other than Curative's) be rescored because the record was silent with respect to whether any other applications proposed cultivation center locations too close to areas zoned for residential use based on the availability of special use permits in those residential areas. (C3722-C3723) Medponics submits that its application is the only one which should be rescored based upon the doctrine of exhaustion of remedies.

Under the doctrine of exhaustion of remedies, a party aggrieved by an administrative decision cannot seek judicial review without first pursuing all available administrative remedies. *Family Amusement of Northern Illinois, Inc. v. Accel Entertainment Gaming, LLC*, 2018 IL App (2d) 170185, ¶27. Here, the Rules do not require that IDOA hold a hearing when deciding which applicant should receive a cultivation center permit. 8 IL ADC 1000.110. Instead, the Rules require that IDOA is to award a cultivation center permit based upon the scoring system set out at 8 IL ADC 1000.110. The Rules further provide that IDOA's award of a cultivation center permit is a final administrative decision subject to judicial review under the Administrative Review Law. 8 IL ADC 1000.700(l). Medponics is the only unsuccessful applicant for the ISP District 2 permit that challenged the permit award to Curative by filing a complaint for administrative review. Medponics is thus the only applicant that exhausted its

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 410. Public Health
General
Act 130. Compassionate Use of Medical Cannabis Program Act

410 ILCS 130/15

130/15. Authority

Effective: June 30, 2016
Currentness

§ 15. Authority.

(a) It is the duty of the Department of Public Health to enforce the following provisions of this Act unless otherwise provided for by this Act:

(1) establish and maintain a confidential registry of qualifying patients authorized to engage in the medical use of cannabis and their caregivers;

(2) distribute educational materials about the health benefits and risks associated with the use of cannabis and prescription medications;

(3) adopt rules to administer the patient and caregiver registration program; and

(4) adopt rules establishing food handling requirements for cannabis-infused products that are prepared for human consumption.

(b) It is the duty of the Department of Agriculture to enforce the provisions of this Act relating to the registration and oversight of cultivation centers unless otherwise provided for in this Act.

(c) It is the duty of the Department of Financial and Professional Regulation to enforce the provisions of this Act relating to the registration and oversight of dispensing organizations unless otherwise provided for in this Act.

(d) The Department of Public Health, the Department of Agriculture, or the Department of Financial and Professional Regulation shall enter into intergovernmental agreements, as necessary, to carry out the provisions of this Act including, but not limited to, the provisions relating to the registration and oversight of cultivation centers, dispensing organizations, and qualifying patients and caregivers.

(e) The Department of Public Health, Department of Agriculture, or the Department of Financial and Professional Regulation may suspend, revoke, or impose other penalties upon a registration for violations of this Act and any rules adopted in accordance

thereto. The suspension or revocation of, or imposition of any other penalty upon, a registration is a final Agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Circuit Court.

Credits

P.A. 98-122, § 15, eff. Jan. 1, 2014. Amended by P.A. 98-1172, § 5, eff. Jan. 12, 2015; P.A. 99-519, § 5, eff. June 30, 2016.

410 I.L.C.S. 130/15, IL ST CH 410 § 130/15

Current through P.A. 101-629. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 410. Public Health
General
Act 130. Compassionate Use of Medical Cannabis Program Act

410 ILCS 130/85

130/85. Issuance and denial of medical cannabis cultivation permit

Effective: January 1, 2014
Currentness

§ 85. Issuance and denial of medical cannabis cultivation permit.

(a) The Department of Agriculture may register up to 22 cultivation center registrations for operation. The Department of Agriculture may not issue more than one registration per each Illinois State Police District boundary as specified on the date of January 1, 2013. The Department of Agriculture may not issue less than the 22 registrations if there are qualified applicants who have applied with the Department.

(b) The registrations shall be issued and renewed annually as determined by administrative rule.

(c) The Department of Agriculture shall determine a registration fee by rule.

(d) A cultivation center may only operate if it has been issued a valid registration from the Department of Agriculture. When applying for a cultivation center registration, the applicant shall submit the following in accordance with Department of Agriculture rules:

(1) the proposed legal name of the cultivation center;

(2) the proposed physical address of the cultivation center and description of the enclosed, locked facility as it applies to cultivation centers where medical cannabis will be grown, harvested, manufactured, packaged, or otherwise prepared for distribution to a dispensing organization;

(3) the name, address, and date of birth of each principal officer and board member of the cultivation center, provided that all those individuals shall be at least 21 years of age;

(4) any instance in which a business that any of the prospective board members of the cultivation center had managed or served on the board of the business and was convicted, fined, censured, or had a registration or license suspended or revoked in any administrative or judicial proceeding;

(5) cultivation, inventory, and packaging plans;

(6) proposed operating by-laws that include procedures for the oversight of the cultivation center, development and implementation of a plant monitoring system, medical cannabis container tracking system, accurate record keeping, staffing plan, and security plan reviewed by the State Police that are in accordance with the rules issued by the Department of Agriculture under this Act. A physical inventory shall be performed of all plants and medical cannabis containers on a weekly basis;

(7) experience with agricultural cultivation techniques and industry standards;

(8) any academic degrees, certifications, or relevant experience with related businesses;

(9) the identity of every person, association, trust, or corporation having any direct or indirect pecuniary interest in the cultivation center operation with respect to which the registration is sought. If the disclosed entity is a trust, the application shall disclose the names and addresses of the beneficiaries; if a corporation, the names and addresses of all stockholders and directors; if a partnership, the names and addresses of all partners, both general and limited;

(10) verification from the State Police that all background checks of the principal officer, board members, and registered agents have been conducted and those individuals have not been convicted of an excluded offense;

(11) provide a copy of the current local zoning ordinance to the Department of Agriculture and verify that proposed cultivation center is in compliance with the local zoning rules issued in accordance with Section 140;

(12) an application fee set by the Department of Agriculture by rule; and

(13) any other information required by Department of Agriculture rules, including, but not limited to a cultivation center applicant's experience with the cultivation of agricultural or horticultural products, operating an agriculturally related business, or operating a horticultural business.

(e) An application for a cultivation center permit must be denied if any of the following conditions are met:

(1) the applicant failed to submit the materials required by this Section, including if the applicant's plans do not satisfy the security, oversight, inventory, or recordkeeping rules issued by the Department of Agriculture;

(2) the applicant would not be in compliance with local zoning rules issued in accordance with Section 140;

(3) one or more of the prospective principal officers or board members has been convicted of an excluded offense;

(4) one or more of the prospective principal officers or board members has served as a principal officer or board member for a registered dispensing organization or cultivation center that has had its registration revoked;

(5) one or more of the principal officers or board members is under 21 years of age;

(6) a principal officer or board member of the cultivation center has been convicted of a felony under the laws of this State, any other state, or the United States;

(7) a principal officer or board member of the cultivation center has been convicted of any violation of Article 28 of the Criminal Code of 2012, or substantially similar laws of any other jurisdiction; or

(8) the person has submitted an application for a certificate under this Act which contains false information.

Credits

P.A. 98-122, § 85, eff. Jan. 1, 2014.

410 I.L.C.S. 130/85, IL ST CH 410 § 130/85

Current through P.A. 101-629. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 410. Public Health
General
Act 130. Compassionate Use of Medical Cannabis Program Act

410 ILCS 130/105

130/105. Requirements; prohibitions; penalties for cultivation centers

Effective: August 9, 2019
Currentness

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

(a) The operating documents of a registered cultivation center shall include procedures for the oversight of the cultivation center, a cannabis plant monitoring system including a physical inventory recorded weekly, a cannabis container system including a physical inventory recorded weekly, accurate record keeping, and a staffing plan.

(b) A registered cultivation center shall implement a security plan reviewed by the State Police and including but not limited to: facility access controls, perimeter intrusion detection systems, personnel identification systems, 24-hour surveillance system to monitor the interior and exterior of the registered cultivation center facility and accessible to authorized law enforcement and the Department of Agriculture in real-time.

(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.

(d) All cultivation of cannabis for distribution to a registered dispensing organization must take place in an enclosed, locked facility as it applies to cultivation centers at the physical address provided to the Department of Agriculture during the registration process. The cultivation center location shall only be accessed by the cultivation center agents working for the registered cultivation center, Department of Agriculture staff performing inspections, Department of Public Health staff performing inspections, law enforcement or other emergency personnel, and contractors working on jobs unrelated to medical cannabis, such as installing or maintaining security devices or performing electrical wiring.

(e) A cultivation center may not sell or distribute any cannabis to any individual or entity other than another cultivation center, a dispensing organization registered under this Act, or a laboratory licensed by the Department of Agriculture.

(f) All harvested cannabis intended for distribution to a dispensing organization must be packaged in a labeled medical cannabis container and entered into a data collection system.

(g) No person who has been convicted of an excluded offense may be a cultivation center agent.

(h) Registered cultivation centers are subject to random inspection by the State Police.

(i) Registered cultivation centers are subject to random inspections by the Department of Agriculture and the Department of Public Health.

(j) A cultivation center agent shall notify local law enforcement, the State Police, and the Department of Agriculture within 24 hours of the discovery of any loss or theft. Notification shall be made by phone or in-person, or by written or electronic communication.

(k) A cultivation center shall comply with all State and federal rules and regulations regarding the use of pesticides.

Credits

P.A. 98-122, § 105, eff. Jan. 1, 2014. Amended by P.A. 98-1172, § 5, eff. Jan. 12, 2015; P.A. 101-363, § 55, eff. Aug. 9, 2019.

410 I.L.C.S. 130/105, IL ST CH 410 § 130/105
Current through P.A. 101-629. Some statute sections may be more current, see credits for details.

End of Document

Joint Committee on Administrative Rules

ADMINISTRATIVE CODE

TITLE 8: AGRICULTURE AND ANIMALS
CHAPTER I: ILLINOIS DEPARTMENT OF AGRICULTURE
SUBCHAPTER v: LICENSING AND REGULATIONS
PART 1000 COMPASSIONATE USE OF MEDICAL CANNABIS PILOT PROGRAM
SECTION 1000.10 DEFINITIONS AND INCORPORATIONS

Section 1000.10 Definitions and Incorporations

Definitions for this Part can be located in Section 10 of the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130/10]. The following definitions shall also apply to this Part:

"Act" means the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130].

"Adequate supply" means 2.5 ounces of usable cannabis during a period of 14 days and that is derived solely from an intrastate source. The pre-mixed weight of medical cannabis used in making a cannabis-infused product shall apply toward the limit on the total amount of medical cannabis a registered qualifying patient may possess at any one time. [410 ILCS 130/10(a)]

"Alterations" means permanent changes in activities or processes at a cultivation center, or changes in production, handling or storage of the product mix, that do not modify the efficiency of facility structures or systems.

"Applicant" means any corporation, limited liability company, association or partnership, limited liability partnership, or one or more individuals, principal officers, agency, business trust, estate, trust, or any other legal entity that is applying with the Illinois Department of Agriculture for a cultivation center permit under the Act.

"Area zoned for residential use" means an area zoned exclusively for residential use; provided that, in municipalities with a population over 2,000,000 people, "an area zoned for residential use" means an area zoned as a residential district or a residential planned development.

"Batch" means the established segregation of a group of plants at the time of planting for the control of quantity, traceability and/or strain. A batch number will be assigned at the time of planting for a specified number of plants. When plants reach 18 inches in height, a specific number will be assigned for each plant within that batch. The batch number will remain with the segregated plants through harvest to final packaging. The batch number will be included on the label of the package distributed for the end user.

"Batch number" means a unique numeric or alphanumeric identifier assigned to a batch by a cultivation center when the batch is first planted. The batch number shall contain the facility number and a sequence to allow for inventory and traceability.

"Biosecurity" means a set of preventative measures designed to reduce the risk of transmission of infectious diseases in crops, quarantined pests, invasive alien species, and living modified organisms.

"Cannabis" means *marijuana, hashish and other substances which are identified as including any parts of the plant Cannabis sativa and including any and all derivatives or subspecies, such as Indica, of all strains of cannabis, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other cannabinol derivatives, including its naturally occurring or synthetically produced ingredients whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.* (Section 3 of the Cannabis Control Act)

"Cannabis concentrate" means a product derived from medical cannabis that is produced by extracting cannabinoids from the plant through the use of propylene glycol, glycerin, butter, olive oil or other typical cooking fats; water, ice or dry ice; or butane, propane, CO_2, ethanol or isopropanol. The use of any other solvent is expressly prohibited unless and until it is approved by the Department.

"Cannabis plant monitoring system" means a system that includes, but is not limited to, testing and data collection established and maintained by the registered cultivation center and available to the Department for the purposes of documenting each cannabis plant and for monitoring plant development throughout the life cycle of a cannabis plant cultivated for the intended use by a qualifying patient from seed planting to final packaging. [410 ILCS 130/10(c)]

"Cannabis product" means a product containing medical cannabis either in a physical form or infused with an extracted resin.

"Cannabis waste" means any part of the plant that is not usable cannabis, or cannabis that cannot be processed as provided in Section 1000.510(d)(2).

"Child-resistant" means special packaging that is:

designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 CFR 1700.20 (1995) and ASTM classification standard D3475-14, http://www.astm.org/Standards/D3475.htm. This incorporation by reference does not include any later amendments or editions. The Department maintains copies of the applicable federal regulation and ASTM classification standard, that are available to the public;

closable for any product intended for more than a single use or containing multiple servings; and

labeled properly as required by Section 1000.420.

"Clone" means a plant section from a female cannabis plant not yet root-bound, growing in a water solution or other propagation matrix, that is capable of developing into a new plant.

"Crop input" means any substance that is used by a producer for the production of medical cannabis. This may include pesticides as defined by the Illinois Pesticide Act or the American Association of Pesticide Control Officials, fertilizers as defined by the Illinois Commercial Fertilizer Act of 1961 or the American Association of Plant Food Officials, and soil amendments as defined by the Soil Amendment Act;

"Cultivation center" means a facility operated by an organization or business that is registered by the Department of Agriculture to perform necessary activities to provide only registered medical cannabis dispensing organizations with usable medical cannabis. [410 ILCS 130/10(e)]

"Cultivation center agent" means a principal officer, board member, employee, or agent of a registered cultivation center who is 21 years of age or older and has not been convicted of an excluded offense. [410 ILCS 130/10(f)]

"Cultivation center agent-in-charge" or "agent-in-charge" means the cultivation center agent who has been designated by the cultivation center to have control and management over the day to day operations of the cultivation center. A cultivation center may designate more than one agent-in-charge to cover varying operational work shifts, but may only have one per work shift.

"Cultivation center agent identification card" means a document issued by the Department of Agriculture that identifies a person as a cultivation center agent. [410 ILCS 130/10(g)]

"Cultivation center agent-in-charge identification card" means a document issued by the Department of Agriculture that identifies a cultivation center agent as an agent-in-charge.

"DD214" means a certified DD214 Certificate of Separation or Release from Active Duty Member Copy 4 or State Director of Veterans' Affairs Copy 6; a certified DD214 Report of Separation from Active Duty 2; or equivalent certified document indicating character of service and dates of service. A DD214 can be certified by the State Department of Veterans' Affairs, county veterans' officials, and the federal Department of Veterans Affairs.

"Department" means the Illinois Department of Agriculture.

"DFPR" means the Illinois Department of Financial and Professional Regulation.

"DPH" means the Illinois Department of Public Health.

"Disqualifying conviction" means conviction of an excluded offense.

"Enclosed, locked facility" means a room, greenhouse, building, or other enclosed area equipped with locks or other security devices that permit access only by a cultivation center's agents or a dispensing organization's agent working for the

registered cultivation center or the registered dispensing organization to cultivate, store, and distribute cannabis for registered qualifying patients. [410 ILCS 130/10(k)]

"Excluded offense" means:

a violent crime defined in Section 3 of the Rights of Crime Victims and Witnesses Act or a substantially similar offense that was classified as a felony in the jurisdiction where the person was convicted; or

a violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted, except that the Department may waive this restriction if the person demonstrates to the Department's satisfaction that his or her conviction was for the possession, cultivation, transfer, or delivery of a reasonable amount of cannabis intended for medical use.

This exception does not apply if the conviction was under state law and involved a violation of an existing medical cannabis law. [410 ILCS 130/10(l)]

"Facility" shall refer to the permitted physical structures associated with the cultivation center.

"Financial interest" means any actual or future right to ownership, investment or compensation arrangement with another person, either directly or indirectly, through business, investment, spouse, parent or child, in a cultivation center. Financial interest does not include ownership of investment securities in a publicly-held corporation that is traded on a national securities exchange or over-the-counter market in the United States, provided the investment securities held by the person and the person's spouse, parent or child, in the aggregate, do not exceed one percent ownership in the cultivation center.

"Fingerprint-based criminal history records check" means a fingerprint-based criminal history records check conducted by the Department of State Police in accordance with the Uniform Conviction Information Act (UCIA) or 20 Ill. Adm. Code 1265.30 (Electronic Transmission of Fingerprint Requirements).

"Flower" means the gametophytic or reproductive state of cannabis in which the plant is in a light cycle intended to produce flowers, trichromes and cannabinoids characteristic of cannabis.

"Immature plant" means a nonflowering cannabis plant that has an established root structure.

"ISP" means the Illinois Department of State Police.

"Label" means a display of written, printed or graphic matter on the immediate container of any product containing cannabis;

"Laboratory" means an independent laboratory located in Illinois and approved by the Department to have custody and use of controlled substances for scientific and medical purposes and for purposes of instruction, research or analysis.

"Livescan" means an inkless electronic system designed to capture an individual's fingerprint images and demographic data (name, sex, race, date of birth, etc.) in a digitized format that can be transmitted to ISP for processing. The data is forwarded to the ISP Bureau of Identification (BOI) over a virtual private network (VPN) and then processed by ISP's Automated Fingerprint Identification System (AFIS). Once received at the BOI for processing, the inquiry may, as permitted by law, be forwarded to the Federal Bureau of Investigation (FBI) electronically for processing.

"Livescan vendor" means an entity licensed by the Department of Financial and Professional Regulation to provide commercial fingerprinting services under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004.

"Manufacturing" or "manufacture" means the process of converting harvested cannabis material into a finished product by manual labor and/or machinery designed to meet a specific need or customer expectation, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

"Medical cannabis" means cannabis and its constituent cannabinoids, such as tetrahydrocannabinol (THC) and cannabidiol (CBD), used as an herbal remedy or therapy to treat disease or alleviate symptoms. Medical cannabis can be administered in a variety of ways, including, but not limited to: vaporizing or smoking dried buds; using concentrates; administering tinctures or tonics; applying topicals such as ointments or balms; or consuming medical cannabis infused products.

"Medical cannabis cultivation center registration" means a registration issued by the Department of Agriculture. [410 ILCS 130/10(m)]

"Medical cannabis container" means a sealed, traceable, food compliant, tamper resistant, tamper evident container, or package used for the purpose of containment of medical cannabis from a cultivation center to a dispensing organization. [410 ILCS 130/10(n)]

"Medical cannabis dispensing organization" or "dispensing organization" or "dispensary organization" or "dispensary" *means a facility operated by an organization or business that is registered by the 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)]

"Medical cannabis dispensing organization agent" or "dispensing organization agent" means a principal officer, board member, employee, or agent of a registered medical cannabis dispensing organization who is 21 years of age or older and has not been convicted of an excluded offense. [410 ILCS 130/10(p)]

"Medical cannabis-infused product" means food, oils, ointments, sodas, teas, capsules *or other products containing usable cannabis that are not smoked.* [410 ILCS 130/10(q)] Only the portion of any cannabis-infused product that is attributable to cannabis shall count toward the possession limits of the dispensary and the patient.

"Medical use" means the acquisition; administration; delivery; possession; transfer; transportation; or use of cannabis to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition. [410 ILCS 130/10(r)]

"Modification" means changes in structures, processes or activities at a cultivation center that will alter the efficiency of production structures, processing systems, and/or changes in capacity within the center.

"Monitoring" means the continuous and uninterrupted video surveillance of cultivation activities and oversight for potential suspicious actions. Monitoring through video surveillance includes the purpose of summoning a law enforcement officer to the premises during alarm conditions. The Department and ISP or law enforcement agencies designated by ISP shall have the ability to access a cultivation center's monitoring system in real time via a secure web based portal

"Motor vehicle" means a self-propelled vehicle as defined in Section 1-146 of the Illinois Vehicle Code.

"Natural processing" or "naturally produced" means the preparation of the harvested cannabis without significantly changing its physical form.

"Operational and Management Practices Plan" means a narrative description of all practices that will be employed at the facility for the production of medical cannabis and medical cannabis-infused products. The plan shall include but is not limited to:

the types and quantities of medical cannabis products that will be produced at the facility;

the methods of planting (seed or clones), harvesting, drying and storage of medical cannabis;

the estimated quantity of waste material to be generated and plans for subsequent disposal;

the quantity and proposed method for disposal for all crop inputs utilized for plant production;

methods for training employees for the specific phases of production;

biosecurity measures to be implemented for plant production and edible infused product production;

planned response to discrepancies in accounting of product inventories;

sampling strategy and quality testing for labeling purposes;

procedures to follow for proper labeling; and

procedures to follow for handling mandatory and voluntary recalls of cannabis or cannabis-infused products.

"Permit" means a registration issued by the Department to a qualified applicant to operate a cultivation center.

"Permittee" means a qualified applicant who is issued a permit by the Department to operate a cultivation center.

"Person" includes, but is not limited to, a natural person, sole proprietorship, partnership, joint venture, limited liability partnership or company, corporation, association, agency, business, not-for-profit organization.

"Physician" means a doctor of medicine or doctor of osteopathy licensed under the Medical Practice Act of 1987 to practice medicine and who has a controlled substances license under Article III of the Illinois Controlled Substances Act. It does not include a licensed practitioner under any other Act, including but not limited to the Illinois Dental Practice Act. [410 ILCS 130/10(s)]

"Principal officer" includes a prospective cultivation center or cultivation center owner, president, vice president, secretary, treasurer, partner, officer, board member, shareholder or person involved in a profit sharing arrangement.

"Producer backer" means any person (including any legal entity) with a direct or indirect financial interest in the applicant.

"Production" or "produce" means the planting, preparation, cultivation, growing, harvesting, propagation, compounding, conversion, natural processing or manufacturing of cannabis, and includes any packaging or repackaging of the substance, or labeling or relabeling of its container.

"Qualified applicant" means an applicant for a cultivation center permit who receives at least the minimum required score in each category required by the application.

"Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition. [410 ILCS 130/10(t)]

"Registered" means licensed, permitted, or otherwise certified by the Department of Agriculture under the Act. [410 ILCS 130/10(u)]

"Restricted access area" means a building, room or other contiguous area upon the permitted premises where cannabis is grown, cultivated, harvested, stored, weighed, packaged, sold or processed for sale, under control of the permitted facility.

"Sale" means any form of delivery, which includes barter, exchange or gift, or offer therefor, and each such transaction made by any person whether as principal, proprietor, agent, servant or employee.

"Security alarm system" means a device or series of devices intended to summon law enforcement personnel during, or as a result of, an alarm condition. Devices may include hard-wired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audible, visual or electronic signal; motion detectors, pressure switches, duress alarms (a silent system signal generated by the entry of a designated code into the arming station to indicate that the user is disarming under duress); panic alarms (an audible system signal to indicate an emergency situation); and hold-up alarms (a

silent system signal to indicate that a robbery is in progress). The Department and law enforcement agencies shall have the ability to access a cultivation center's security alarm system in real-time.

"THC" means tetrahydrocannabinol.

"THCA" means tetrahydrocannabinolic acid.

"Tincture" means a cannabis-infused solution, typically comprised of alcohol, glycerin or vegetable oils, derived either directly from the cannabis plant or from a processed cannabis extract. Tinctures may be added to foods and other liquids, applied directly to the skin, consumed orally by drinking a small quantity, or absorbed sublingually by placing a few drops under the tongue.

"Usable cannabis" means the seeds, leaves, buds, and flowers of the cannabis plant, and any mixture or preparation thereof, including the resin extracted from any part of the plant, *but does not include the stalks, and roots of the plant. It does not include the weight of any non-cannabis ingredients combined with cannabis, such as ingredients added to prepare a topical administration, food, or drink.* [410 ILCS 130/10(w)]

"USEPA" means the United States Environmental Protection Agency.

"Vegetative stage of growth" means that the cannabis plant consists of stems, leaves and roots and does not have any flowers or buds.

"Verification system" means a web-based system established and maintained by the Department of Public Health that is available to the Department of Agriculture, the Department of Financial and Professional Regulation, law enforcement personnel, and registered medical cannabis dispensing organization agents on a 24-hour basis for the verification of registry identification cards, the tracking of delivery of medical cannabis to medical cannabis dispensing organizations, and the tracking of the date of sale, amount, and price of medical cannabis purchased by a registered qualifying patient. [410 ILCS 130/10(x)]

"Veteran" means a person who served in one of the five active-duty Armed Services or their respective Guard or Reserve units, and who was discharged or released from service under conditions other than dishonorable.

"Violent crime" means any felony in which force or threat of force was used against the victim, or any offense involving sexual exploitation, sexual conduct or sexual penetration, or a violation of Section 11-20.1, 11-20.1B, or 11-20.3 of the Criminal Code of 1961 or the Criminal Code of 2012, domestic battery, violation of an order of protection, stalking, or any misdemeanor which results in death or great bodily harm to the victim or any violation of Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012, or Section 11-501 of the Illinois Vehicle Code, or a similar provision of a local ordinance, if the violation resulted in personal injury or death, and includes any action committed by a juvenile that would be a violent crime if committed by an adult. For the purposes of this definition*, "personal injury" shall include any Type A injury as indicated on the traffic accident report completed by a law enforcement officer that requires immediate professional attention in either a doctor's office or medical facility. A Type A injury shall include severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene,* or a substantially similar offense that was tried

and convicted as a felony in the jurisdiction where the cultivation center agent, agent-in-charge, or applicant for a cultivation center agent or agent-in-charge identification card, was convicted. [725 ILCS 120/3(c)]

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TITLE 8: AGRICULTURE AND ANIMALS
CHAPTER I: ILLINOIS DEPARTMENT OF AGRICULTURE
SUBCHAPTER v: LICENSING AND REGULATIONS
PART 1000 COMPASSIONATE USE OF MEDICAL CANNABIS PILOT PROGRAM
SECTION 1000.100 PERMIT APPLICATION

Section 1000.100 Permit Application

a) A cultivation center permit shall be obtained for each facility prior to commencement of any production activities. The permit shall, along with any other certificate, business license or other authorization required to conduct production activities, be posted in a conspicuous place within the facility.

b) The Department shall accept applications for cultivation center permits for 14 calendar days after the date indicated on the Department's website as the commencement date for accepting applications.

1) Submissions shall be considered as submitted on the date on which they are postmarked or, if delivered in person during regular business hours, on the date on which they are so delivered or, if sent electronically, on the date received by the Department if received on or before 5 p.m. Central Time. If received electronically after 5 p.m. Central Time, they will be considered received on the next day.

2) Submissions received after the 14 day period or any way other than required in this subsection (b) shall be returned to the applicant.

3) Notification of the availability of applications will be posted on the Department's website at www.agr.state.il.us/. Application forms will be made available online at that website and may be completed online and submitted electronically to that website, at the discretion of the Department, or sent via U.S. mail to the address set forth in the application.

c) The permit application shall be submitted on the forms provided by the Department. The forms will include instructions for their completion and submission. The application will reflect the information required of applicants by the Act and this Part and will include requests for information, plans, maps and other materials in support of the application needed by the Department to make its determination on the permit request. The instructions on the application will reflect the total maximum number of points that can be awarded for each required criteria, measure and bonus point category listed in Section 1000.110. The instructions/application will also identify the total minimum number of points necessary from the required criteria and measures to be eligible for consideration of the bonus point categories. All applications will be reviewed and points awarded based upon the same point system in a fair and unbiased manner. If all materials, documentations, fees and

information required by the application form are not submitted, the application shall be returned to the applicant. The applicant shall then have seven calendar days to resubmit the application in its entirety. Once submitted, the required fee will not be returned. Upon receipt of an application deemed to be complete, the Department will engage in no further communication with the applicant until after the selection process is completed:

1) Except as provided in Section 1000.110(g) and (h); and

2) Unless the applicant has applied for zoning approval from the local zoning authority and the matter is pending before the authority. The applicant may submit verification of compliance with the local zoning rules once a ruling is issued by the local zoning authority. In no event, however, may the verification be submitted more than 60 days after the date of submission of the application to the Department.

d) An applicant applying for a cultivation center permit shall submit, in duplicate, the following:

1) *The proposed legal name of the cultivation center*;

2) *The proposed physical address of the cultivation center and description of the enclosed, locked facility as it applies to cultivation centers where medical cannabis will be grown, harvested, manufactured, packaged, or otherwise prepared for distribution to a dispensing organization*;

3) *The name, address, and date of birth of each principal officer and board member of the cultivation center, provided that all those individuals shall be at least 21 years of age*;

4) *Any instance in which a business that any of the prospective board members of the cultivation center had managed or served on the board of the business and was convicted, fined, censured, or had a registration or license suspended or revoked in any administrative or judicial proceeding*;

5) *Cultivation, inventory, and packaging plans*;

6) *Proposed operating by-laws* (Operation and Management Practices Plan) *that include procedures for the oversight of the cultivation center, development and implementation of a plant monitoring system, medical cannabis container tracking system, accurate record keeping, staffing plan, and security plan reviewed* by *the Illinois State Police that are in accordance with the rules issued by the Department of Agriculture under the Act. A physical inventory shall be performed of all plants and medical cannabis containers on a weekly basis*. ISP may utilize the services of a private security contractor licensed by DFPR to assist with performing a security plan review;

7) *Experience with agricultural cultivation techniques and industry standards*, including experience with the cultivation of agricultural or horticultural products, operating an agriculturally related business, or operating a horticultural business;

8) *Any academic degrees, certifications, or relevant experience with related businesses*;

9) *The identity of every person, association, trust,* producer backer, partnership, other entity *or corporation having any direct or indirect pecuniary interest in the cultivation center operation with respect to which the registration is sought. If the disclosed entity is a trust, the application shall disclose the names and addresses of the beneficiaries;* (Section 85 of the Act)

10) If a sole proprietorship, the name, residence and date of birth of the owner;

11) *If a partnership, the names and addresses of all partners, both general and limited* (Section 85 of the Act) and any partnership or joint venture documents.

A) For a domestic limited partnership, a copy of the Certificate of Limited Partnership and a Certificate of Good Standing from the Illinois Secretary of State dated within the last 60 days.

B) For a foreign limited partnership, a certificate of Good Standing from the state of formation, a copy of the Certificate of Authority from the Illinois Secretary of State and a Certificate of Good Standing from the Illinois Secretary of State dated within the last 60 days;

12) If a limited liability partnership, the names and addresses of all partners, and any partnership or joint venture documents.

A) For a domestic limited liability partnership, a copy of the Certificate of Limited Liability Partnership and a Certificate of Good Standing from the Illinois Secretary of State dated within the last 60 days.

B) For a foreign limited liability partnership, a certificate of Good Standing from the state of formation, a copy of the Certificate of Authority from the Illinois Secretary of State and a Certificate of Good Standing from the Illinois Secretary of State dated within the last 60 days;

13) If a corporation based in Illinois, a copy of the Articles of Incorporation and a copy of the Certificate of Good Standing issued by the Illinois Secretary of State or obtained from the Secretary of State's website within the last 60 days. If the corporation is a foreign corporation, a copy of the Articles of Incorporation, a copy of the Certificate of Good Standing from the state or country in which the corporation is domiciled, a copy of the Certificate of Authority from the Illinois Secretary of State and a Certificate of Good Standing from the Illinois Secretary of State dated within the last 60 days. If using an assumed name (d/b/a), a copy of the assumed name registration issued by the Secretary of State. Additionally, applicants shall include *the names and addresses of all stockholders and directors of the corporation* (Section 85 of the Act);

14) If a limited liability company:

A) For a domestic limited liability company, a copy of the Articles of Organization, a copy of the Certificate of Good Standing issued by

the Illinois Secretary of State or obtained from the Secretary of State's website within the last 60 days, and a listing of the members of the limited liability company and his, her, or its contact information.

B) For a foreign limited liability company, a copy of the Articles of Organization and a Certificate of Good Standing from the state of organization, a copy of the Application for Admission to Transact Business in Illinois, along with a Certificate of Good Standing issued by the Illinois Secretary of State, all dated within the last 60 days;

15) If another type of business entity, the same or similar information, as applicable, to that listed in this subsection (d);

16) *Verification from the Illinois State Police that all background checks of the principal officer, board members, and registered agents have been conducted and those individuals have not been convicted of an excluded offense* (Section 85 of the Act).

17) A *copy of the current local zoning ordinance to the Department and* verification from the local zoning authority that the *proposed cultivation center is in compliance with the local zoning rules issued in accordance with Section 140* of the Act (Section 85 of the Act).

A) If the property is not owned but is currently leased by the applicant, the applicant shall provide: a copy of the lease; confirmation of land ownership; identification of any mortgagees and/or lienholders; a written statement from the property owner and/or landlord, certifying consent that the applicant may operate a cultivation center on the premises at least through December 31, 2017; and, if applicable, verification of notification by the property owner to any and all mortgagees and/or perfected lienholders that the property is to be used as a cultivation center at least through December 31, 2017, and consent thereto by any mortgagees and/or perfected lienholders.

B) If the property is not owned or currently leased by the applicant, the applicant shall provide: a written statement from the property owner and/or landlord certifying consent that the applicant will lease or purchase the property for the purpose of operating a cultivation center until at least December 31, 2017; and, if applicable, verification of notification by the property owner to any and all mortgagees and/or perfected lienholders that the property is to be used as a cultivation center at least through December 31, 2017, and consent thereto by any mortgagees and/or perfected lienholders.

C) If the property is owned by the applicant, the applicant shall provide: confirmation of land ownership; identification of any and all mortgagees and/or perfected lienholders; and, if applicable, verification of notification to any and all mortgagees and/or perfected lienholders that the property is to be used as a cultivation center at least through December 31, 2017, and consent thereto by any mortgagees and/or perfected lienholders;

18) A non-refundable application fee as set forth in Section 1000.140 for each application. Each application for a particular District shall be a separate application requiring a separate fee;

19) A location area map of the area surrounding the proposed cultivation center. The map must clearly demonstrate that the proposed cultivation center is *not 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* (Section 105 of the Act);

20) A plot plan of the cultivation center drawn to a reasonable scale. If the cultivation center building is in existence at the time of the application, the applicant shall submit plans and specifications drawn to scale for the interior of the building. If the building is not in existence at the time of application, the applicant shall submit a plot plan and a detailed drawing to scale of the interior and the architect's drawing of the building to be constructed;

21) Documentation acceptable to the Department that the individual or entity filing the application has at least $500,000 in liquid assets. Documentation acceptable to the Department includes a signed statement from an Illinois Licensed CPA attesting to proof of the required amount of liquid assets under the control of an owner or the entity applying. The statement must be dated within 30 calendar days before the date the application was submitted;

22) Documentation acceptable to the Department that the individual or entity filing the application will be able to obtain insurance sufficient to indemnify and hold harmless the State and its officers and employees as required in Section 1000.50(b)(4)(B);

23) All relevant financial information as set forth in Section 1000.200;

24) The name of any agent-in-charge for each work shift;

25) If currently or previously licensed or authorized in another state or jurisdiction to produce or otherwise deal in the distribution of cannabis in any form, the following:

A) A copy of each such licensing/authorizing document verifying licensure in that state or jurisdiction;

B) A statement granting permission to contact the regulatory agency that granted the license to confirm the information contained in the application; and

C) If the license/authorization or application was ever denied, suspended, revoked or otherwise sanctioned, a copy of documentation so indicating, or a statement that the applicant was so licensed and was never sanctioned.

e) The applicant shall sign a notarized statement certifying that:

1) No prospective principal officer or board member has been convicted of an excluded offense in any state or country;

2) The cultivation center will register with the Illinois Department of Revenue should the applicant be granted a permit;

3) The application is complete and accurate; and

4) The applicant has actual notice that, notwithstanding any state law:

A) Cannabis is a prohibited Schedule I controlled substance under federal law;

B) Participation in the program is permitted only to the extent provided by the strict requirements of the Act and this Part;

C) Any activity not sanctioned by the Act or this Part may be a violation of State law;

D) Growing, distributing or possessing cannabis in any capacity, except through a federally-approved research program, is a violation of federal law;

E) Use of medical cannabis may affect an individual's ability to receive federal or State licensure in other areas;

F) Use of medical cannabis, in tandem with other conduct, may be a violation of State or federal law;

G) Participation in the program does not authorize any person to violate federal law or State law and, other than as set out in Section 25 of the Act, does not provide any immunity from or affirmative defense to arrest or prosecution under federal law or State law; and

H) Applicants shall indemnify, hold harmless, and defend the State of Illinois for any and all civil or criminal penalties resulting from participation in the program.

5) The Department has authority to include additional certifications in the application that would be sufficient to ensure compliance with the program and all other applicable laws.

6) All of applicant's principal officers and producer backers expressly agree to be subject to service of process in Illinois with a current Illinois address on file with the Department.

(Source: Amended at 39 Ill. Reg. 5363, effective March 25, 2015)

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TITLE 8: AGRICULTURE AND ANIMALS
CHAPTER I: ILLINOIS DEPARTMENT OF AGRICULTURE
SUBCHAPTER v: LICENSING AND REGULATIONS
PART 1000 COMPASSIONATE USE OF MEDICAL CANNABIS PILOT PROGRAM
SECTION 1000.110 PERMITS - SELECTION CRITERIA

Section 1000.110 Permits − Selection Criteria

a) Each application shall address all criteria and measures as set forth in this Part. The failure by an applicant to address all of the required criteria and measures will result in the application being denied.

b) The required criteria and measures shall include the following, with each criteria accounting for up to the indicated maximum number of the total points available for each criteria:

1) Suitability of the Proposed Facility (150 points):

A) Measure 1: The applicant demonstrates that the proposed facility is suitable for effective and safe cultivation of medical cannabis, sufficient in size, power allocation, air exchange and air flow, interior layout, lighting, and sufficient both in the interior and exterior to handle the bulk agricultural production of medical cannabis, cannabis-infused products, product handling, storage, trimming, packaging, loading and shipping. The loading/unloading of medical cannabis in the transport motor vehicle for shipping shall be in an enclosed, secure area out of public sight.

B) Measure 2: The applicant demonstrates the ability to continue to meet qualifying patient demand by expanding the cultivation facility in a quick and efficient manner with minimal impact on the environment and the surrounding community.

C) Measure 3: The applicant provides an employee handbook that will provide employees with a working guide to the understanding of the day-to-day administration of personnel policies and practices.

2) Proposed Staffing Plan and Knowledge of Illinois Law and Rules Relating to Medical Cannabis (100 points):

A) Measure 1: The applicant fully describes a staffing plan that will provide and ensure adequate staffing and experience for all accessible business hours, safe production, sanitation, adequate security and theft prevention; and

B) Measure 2: The applicant provides an Operations and Management Practices Plan that demonstrates compliance with this Part and the Act.

3) Security Plan (200 points):

A) Measure 1: The applicant's security plan demonstrates its ability to prevent the theft or diversion of medical cannabis and how the plan will assist with ISP, Department, and local law enforcement. Specifically, it shall evidence compliance with all items in Sections 1000.440, 1000.445 and 1000.450.

B) Measure 2: The applicant demonstrates that its plan for record keeping, tracking and monitoring inventory, quality control and security and other policies and procedures will discourage unlawful activity It also describes the applicant's plan to coordinate with and dispose of unused or surplus medical cannabis through ISP and the Department.

C) Measure 3: The applicant's security plan shall describe the enclosed, locked facility that will be used to secure or store medical cannabis, its security measures, including when the location is closed for business, and the steps taken to ensure that medical cannabis is not visible to the public.

D) Measure 4: The applicant describes its transportation plan regarding procedures for safely and securely delivering medical cannabis to registered dispensaries.

4) Cultivation Plan (300 points):

A) Measure 1: The applicant shall describe its plan to provide a steady, uninterrupted supply of medical cannabis to registered dispensaries.

B) Measure 2: The applicant demonstrates knowledge of cultivation methods to be used in the cultivation of cannabis. The applicant shall describe the various strains to be cultivated and its experience, if applicable, with growing those strains or comparable agricultural products.

C) Measure 3: The applicant demonstrates the steps that will be taken to ensure the quality, including the purity and consistency, of the medical cannabis to be provided to dispensaries.

5) Product Safety and Labeling Plan (150 points):

A) Measure 1: The applicant shall describe its plan for providing safe and accurate packaging and labeling of medical cannabis.

B) Measure 2: The applicant shall describe its plan for testing medical cannabis and ensuring that all medical cannabis is free of contaminants, including but not limited to pesticides, microbiological, and residual solvent. If applicable, the applicant shall provide quality history records showing specific testing results

from laboratory testing conducted on the applicant's cannabis products.

C) Measure 3: The applicant shall describe its plan for establishing a recall of the applicant's products in the event that they are shown by testing or other means to be, or potentially to be, defective or have a reasonable probability that their use or exposure to will cause serious adverse health consequences. At a minimum, the plan should include the method of: identification of the products involved; notification to the dispensary organization or others to whom the product was sold or otherwise distributed; and how the products will be disposed of if returned to or retrieved by the applicant.

6) Applicant's Business Plan and Services to be Offered (100 points):

A) Measure 1 The applicant shall provide a business plan that describes how the cultivation center plans to operate on a long-term basis. This shall include the applicant providing a detailed description about the amount and source of the equity and debt commitment for the proposed cultivation center that demonstrates the immediate and long-term financial feasibility of the proposed financing plan, the relative availability of funds for capital and operating needs, and the financial capability to undertake the project.

B) Measure 2: The applicant or its officers, board members, or incorporators demonstrates experience in business management and/or having medical industry, agricultural or horticultural experience and the extent of their involvement in or ability to influence the day-to-day operations of the facility.

C) Measure 3: The business plan demonstrates a start-up timetable that provides an estimated time from permit approval of the cultivation center to full operation, and the assumptions used for the basis of those estimates.

c) The Department shall award bonus points for preferred but not required initiatives in the following categories based on the applicant's ability to meet or exceed minimum requirements, with each initiative accounting for up to a maximum of 20 points each, for a maximum total of 160 bonus:

1) Labor and Employment Practices: The applicant may describe any plans it has to:

A) Provide a safe, healthy and economically beneficial working environment for its employees, including, but not limited to, its plans regarding workplace safety and environmental standards, codes of conduct, healthcare benefits, educational benefits, retirement benefits, and wage standards.

B) Recruit and/or hire minorities, women, veterans, disabled persons and Illinois residents.

2) Research Plan: The applicant may provide the Department with a detailed proposal to conduct, or facilitate, a scientific study or studies related to the

medicinal use of cannabis. To the extent it has been determined, the applicant may include in its proposal, a detailed description of:

A) The methodology of the study;

B) The issues to be studied;

C) The methods that will be used to identify and select study participants;

D) The identity of all persons or organizations that will be worked with in connection with the study, including the role of each;

E) The duration of the study; and

F) The intended use of the study results.

3) Community Benefits Plan: The applicant may provide the Department with a detailed description of any plans the applicant has to give back to the local community if awarded a cultivation center permit.

4) Substance Abuse Prevention Plan: The applicant may provide a detailed description of any plans it will undertake, if awarded a cultivation center permit, to combat substance abuse in Illinois, including the extent to which the applicant will partner, or otherwise work with existing substance abuse programs.

5) Local Community/Neighborhood Report: The applicant may provide comments, concerns or support regarding the potential impact of the proposed location to the local community and neighborhood. This may include the local community's concerns or support regarding the proposed location's proximity to substance abuse treatment centers, day care centers, schools and halfway houses.

6) Environmental Plan: The applicant may demonstrate an environmental plan of action to minimize the carbon footprint, environmental impact, and resource needs for the production of medical cannabis. The applicant may describe any plans for the use of alternative energy, the treatment of waste water and runoff, and scrubbing or treatment of exchanged air.

7) Verification of Minority Owned, Female Owned, Veteran Owned, or Disabled Person Owned Business: The Minority, Female, Veteran, or Disabled Person applicant must own at least 51 percent of the entity applying for registration. The percentage totals may include any combination of these types of businesses. The Minority, Female, Veteran, or Disabled Person applicant must also share in control of management and day-to-day operations of the permitted facility. Documentation must be submitted at the time of application that demonstrates the respective status of the applicant, including, but not limited to, certification under the Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575] for minority, female or disabled person applicants, or a DD214 for veteran applicants. For purposes of this subsection (c)(7), minority, female, and disabled shall have the meanings ascribed in Section 2 of the

Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575/2].

8) Verification that the applicant's principal place of business is headquartered in Illinois. The names, addresses and verification of the applicant's proposed agents that reside in Illinois. The applicant may also provide a plan for generating Illinois-based jobs and economic development.

d) Should the applicant be awarded a permit, the information and plan that an applicant provided in its application becomes a mandatory condition of the permit. If a permittee fails to comply with standard and special conditions of the permit, the Department may assess a penalty or seek suspension or revocation of the permit pursuant to Section 1000.700.

e) The Department may issue a cultivation center permit with conditions addressing weaker areas of the cultivation center's application that shall be addressed and corrected in the manner and timeframe set forth in the permit.

f) There shall not be more than one permit issued per each of the 22 ISP District boundaries as specified on January 1, 2013.

1) A permit shall be issued to the qualified applicant receiving at least the minimum required score in each category and the highest total score overall as compared to the other applicants within the applicable district.

2) ISP District Chicago (District C) incorporates ISP Districts 3 and 4. Therefore, the Department shall issue two separate permits for ISP District C.

g) In the event that two or more qualified applicants for a cultivation center permit receive the same total score, the Department shall select the applicant that received the highest score in the cultivation plan category. In the event that the same two applicants received the same score in the cultivation plan category, the Department shall select the applicant that received the highest score in the security plan category.

1) If a tie score still remains, the tied applicants will be interviewed by an unbiased panel selected by the Department.

2) The panel will judge the overall applications and suitability, sustainability and likelihood of success of the applicants and award the permit accordingly.

h) In the event that there are no qualified applicants in a particular District, the applicant with the highest total score will meet with an unbiased panel selected by the Department to determine whether the applicant may be able to cure any deficiencies in the application to become qualified. If the applicant is unable to cure the deficiencies, the panel will meet with the applicant with the next highest score to determine whether it may be able to cure any deficiencies in its application to become qualified. If that applicant is unable to cure the deficiencies, and there are no qualified applicants in that particular District, the application process will be reopened. All applicants will be required to submit a new fee and application for that District.

i) If no qualified applicants are found during the process described in subsections (g) and (h), or if an applicant that is issued a conditional permit fails to fulfill the conditions of the conditional permit, or if no permit is issued or active in a particular District for any other reason, the Department shall announce another period to submit an application for that District. The application period shall be for 30 calendar days from the date specified in the announcement.

j) The Department may verify information contained in each application and accompanying documentation to assess the applicant's character and fitness to operate a cultivation center. Notwithstanding an applicant satisfying the foregoing selection criteria, the Department may, in its discretion, refuse to issue a permit if it is not satisfied that an applicant, or any one required to be identified in the application by Section 1000.100, is a person of good character, honesty and integrity, and is not:

1) A person whose background, including criminal charges, reputation and association, is injurious to the health, safety, morals, good order and general welfare of the People of the State of Illinois;

2) A person whose background, criminal record, reputation, habits, social or business associations adversely affect public confidence and trust in the medical cannabis industry or poses a threat to the public interests of the State or to the security and integrity of the medical cannabis industry;

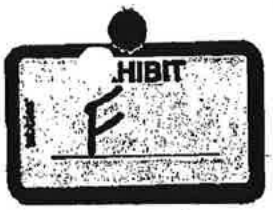
3) A person who creates or enhances the dangers of unlawful practices, methods and activities in the medical cannabis industry, including, but limited to, product diversion;

4) A person who presents questionable business practices and financial arrangements incidental to the medical cannabis industry;

5) A person who associates with, either socially or in business affairs, or employs persons of notorious or unsavory reputation or who have extensive police records, or who have failed to cooperate with any officially constituted investigatory or administrative body; or

6) A person who has had a cannabis dispensary or cultivation center license revoked, suspended or sanctioned in any other jurisdiction.

(Source: Amended at 39 Ill. Reg. 5363, effective March 25, 2015)



CURRENCY EXCHANGE:	An establishment, except a bank, a post office, trust company, savings bank, savings and loan association, credit union, industrial loan and thrift company, engaged in the business of cashing checks, drafts, money orders or traveler's checks, exchanging currency or transmitting money within the United States or overseas by any means for a fee. Check cashing shall not include stand-alone services located inside buildings so long as service incorporates no signage in the windows of the building visible from public view. For purposes of zoning, a currency exchange is considered an Alternative Financial Service.
DOG RUN	An enclosed outdoor area intended for the exercising and/or containment of dogs.
DOWNTOWN CORE:	The downtown core shall be as described in the Downtown Core Section hereof.
DOWNTOWN FRINGE:	The downtown fringe shall be as described in the Downtown Fringe Section hereof.
DISH ANTENNA:	A parabolic-shaped receiver and/or transmitter for entertainment and communication transmissions.
DRIVE-IN ESTABLISHMENT:	A business establishment, other than a drive-in or drive-through restaurant, so developed and used that its retail or service character is dependent, in whole or in part, on providing a driveway approach for motor vehicles to serve patrons while in the motor vehicle rather than within a building or structure.
DRIVE-THROUGH RESTAURANT:	An eating establishment that provides a driveway approach for the serving of food and beverages to customers in a motor vehicle and which may also provide an indoor seating area with a minimum of two (2) tables and four (4) chairs. Accessory outdoor seating may be provided. Carryout and delivery service must be an accessory use.
DWELLING:	A building or portion thereof, but not including a house trailer or mobile home, designed or used exclusively for residential occupancy, including one-family dwelling units, two-family dwelling units and multiple-family dwelling units, but not including hotels, boardinghouses or lodging houses.
DWELLING, GROUP:	Two (2) or more one-family, two-family or multiple-family dwellings, or boardinghouses or lodging houses, located on one (1) zoning lot, but not including tourist courts or motels.

C 2178

RECREATIONAL VEHICLE:	A vehicle originally designed or modified for living quarters, human habitation, or recreation and not used as a commercial vehicle, including, but not limited to, the following:
	A. Camper Trailer. A folding or collapsible vehicle without its own motive power, designed as temporary living quarters for travel, camping, recreation, or vacation use.
	B. Motorized Home. A vehicular unit on a self-propelled motor vehicle chassis, primarily designed as temporary living quarters for travel, camping, recreation, or vacation use.
	C. Off-the-road-vehicle. A vehicle intended primarily for recreational use off of roads where state vehicle licenses are required, such as a dune buggy, go-cart or snowmobile.
	D. Racing car or cycle. A vehicle intended to be used in racing competition, such as a race car, stock car, or racing cycle.
	E. Travel Trailer. A vehicle without its own motive power, designed to be used as a temporary dwelling for travel, camping, recreational or vacation use.
	F. Truck Camper. A structure designed primarily to be mounted on a pick-up or truck chassis and designed to be used as a temporary dwelling for travel, camping, recreational or vacation use. When mounted on a truck, such a structure and the truck shall together be considered one vehicle.
RESIDENTIAL AREA:	A zoning lot or portion of a zoning lot designed or used exclusively for residential purposes.
RESTAURANT:	An establishment where food and beverages can be purchased and eaten on the premises. Must provide an indoor seating area with a minimum of two (2) tables and four (4) chairs. Accessory outdoor seating may be provided. Carryout and delivery service may only be an accessory use. Establishments with drive-in or drive-through services are not permitted.
RESTAURANT, HOTEL:	An establishment where food and beverages can be purchased and eaten on the premises. Must provide an indoor seating area with a minimum of seventy five (75) seats, room service, and must have outside signage. Accessory outdoor seating may be provided.
RINGELMANN NUMBER:	The "Ringelmann Number" is the number of the area on the Ringelmann Chart that coincides most nearly with the visual density of emission.
ROOF LINE:	The part of the roof or parapet that covers the major area of the building.

SECTION 4. USE REGULATIONS

4.1. Use Districts

ESTABLISHMENT OF ZONE DISTRICTS	
In order to carry out the purposes and provisions of this ordinance, the City of Aurora, Illinois is hereby divided into the following districts:	
ABBREVIATION	DISTRICT NAME
OPEN SPACE, PARK, RECREATION DISTRICT	
OS-1	Conservation, Open Space, and Drainage District
OS-2	Open Space and Recreation District
P	Park and Recreation District
RESIDENTIAL DISTRICTS	
E	One-Family Dwelling District
R-1	One-Family Dwelling District
R-2	One-Family Dwelling District
R-3	One-Family Dwelling District
R-4	Two-Family Dwelling District
R-4A	Two-Family Dwelling District
R-5	Multiple-Family Dwelling District
R-5A	Midrise Multiple-Family Dwelling District
BUSINESS DISTRICTS	
B-1	Business District Local Retail
B-2	Business District General Retail
B-3	Services and Wholesale District
B-B	Business-Boulevard District
MANUFACTURING DISTRICTS	
M-1	Manufacturing District Limited
M-2	Manufacturing District General
OTHER DISTRICTS	
ORI	Office, Research and Industrial
R-D	Research & Development District
DC	Downtown Core
F	Downtown Fringe
O	Office
PDD	Planned Development District

4.2. Permitted Uses & Structures

4.2-1. Religious Institutions

4.2-1.1. All religious institutions shall comply with all applicable building and fire codes, and Aurora comprehensive plan.

4.2-1.2. Religious institutions built or buildings newly occupied and used as religious institutions on or after July 28, 1986, shall be regulated as follows:

C 2180

7.5-2. Intent & Purpose

7.5-2.1. The "R-1" One-Family Dwelling District is intended to provide the City of Aurora with a wide range of quality housing opportunities by providing single-family areas of a low-density character containing a minimum lot area of ten thousand (10,000) square feet.

7.5-3. District Specific Regulations

7.5-3.1. Rules. The Rules Section of the Aurora Zoning Ordinance shall apply in addition to the following District specific provisions:

A. Only one (1) principal building shall be allowed on a zoning lot.

B. All single family detached dwelling units shall be constructed on a single recorded lot.

7.5-3.2. Definitions

7.5-4. Use Regulations

7.5-4.1. Permitted Uses. The Permitted Uses for this district as identified in Table One: Use Categories shall apply.

7.5-4.2. Special Uses. The Special Uses for this district as identified in Table One: Use Categories shall apply.

7.5-4.3. Accessory Uses. The Use Regulations Section of the Aurora Zoning Ordinance shall apply.

A. The Permitted Structures and Obstructions for this district are identified in Table Four: Permitted Structures and Obstructions.

7.5-5. Bulk Restrictions

7.5-5.1. Building, Dwelling and Structure Standards

A. One-Story Dwelling. Every one-story dwelling unit shall have a total ground floor area of not less than eleven hundred and fifty (1150) square feet.

B. Dwellings more than one-story. Every dwelling of more than one story shall have a total floor area of not less than fourteen hundred fifty (1450) square feet.

7.5-5.2. Floor Area Ratio.

A. There are no floor area ratio regulations for this district.

7.5-5.3. Height

The Height Section of Bulk Restrictions in the Aurora Zoning Ordinance shall apply in addition to the following District specific provisions:

A. Height of buildings. The maximum height of buildings permitted shall be as follows:

i. Buildings including accessory: Thirty-five (35) feet and not over two and one-half (2 1/2) stories.

7.9-5.11. Performance Standards

A. The Bulk Restrictions Section of the Aurora Zoning Ordinance shall apply.

7.9-5.12. Setbacks

A. The minimum yard areas required in the R-4A shall be as follows:

i. Front--Thirty (30) feet.

ii. Interior side--Eight (8) feet.

iii. Exterior side--Fifteen (15) feet.

iv. Rear--Twenty (20) feet.

7.9-5.13. Signs

A. There shall be no signs permitted other than specified exceptions as provided for in the Aurora sign ordinance.

B. Nameplate signs shall not exceed two (2) square feet per side.

7.10. "R-5" Multiple-Family Dwelling District.

7.10-1. Title

7.10-1.1. The Multiple-family Dwelling District (hereinafter referenced as the "Multi-family District") shall be designated as "R-5" on the City of Aurora Zoning Map.

7.10-2. Intent & Purpose

7.10-2.1. The Multiple-family District set forth herein is established in order to develop a wide range of quality housing opportunities throughout the City. Specifically, it is intended to allow for quality rental type dwelling units within developments that establish and maintain a safe and secure living environment. The Multi-family District shall be a high intensity land use, generally relating to other high intensity land uses.

7.10-3. District Specific Regulations

7.10-3.1. The Rules and Definitions Section of the Aurora Zoning Ordinance shall apply in addition to the following District specific provisions:

7.10-3.2. Rules

A. General provisions. The Bulk Restrictions Section of the Aurora Zoning Ordinance shall apply in addition to the following District specific provisions:

i. Plat approval. All zoning lots shall be subject to final plat approval pursuant to the Aurora Subdivision Control Ordinance.

ii. Only one principal building shall be allowed on a zoning lot, except where the owner of any such development enters into a Property Management Agreement with the City of Aurora.

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REPORT OF PROCEEDINGS

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

MEDPONICS ILLINOIS, LLC,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 125443
	)	
ILLINOIS DEPARTMENT OF AGRICULTURE, et al.,	)	
	)	
	)	
Defendants-Appellees.	)	

The undersigned, being first duly sworn, deposes and states that on June 3, 2020, there was electronically filed and served upon the Clerk of the above court the Brief and Appendix of Appellant. Service of the Brief will be accomplished by email as well as electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

SEE ATTACHED SERVICE LIST

Within five days of acceptance by the Court, the undersigned states that thirteen copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Melissa A. Murphy-Petros
Melissa A. Murphy-Petros

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Melissa A. Murphy-Petros
Melissa A. Murphy-Petros

Service List

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