



City Planning and Development Department Development Management Division

15th Floor, City Hall
414 East 12th Street
Kansas City, Missouri 64106-2795
(816) 513-8801

STAFF REPORT **June 18, 2019** **(10)**

Re: **CD-CPC-2019-00083**

Applicant: **Councilmember Jermaine Reed, 3rd District at Large**

Request: Amending Chapter 88, Zoning and Development Code, to regulate medical marijuana facilities authorized by Article 14, Section 1 of the Missouri Constitution.

State Statute Authorization:

On November 6, 2018, Missouri voters authorized an amendment to the constitution to allow access to medical marijuana in the state. Article 14, Section 1 of the constitution was amended to authorize state-licensed physicians to recommend marijuana for medical purposes to patients with serious illnesses and medical conditions.

The Missouri Department of Health and Senior Services will be responsible for regulating and licensing medical marijuana cultivation, dispensary, manufacturing and testing facilities. The state will begin receiving applications in August.

Ordinance Introduced:

Councilmember Reed introduced Ordinance 190430 on May 23, 2019. The ordinance was referred to Planning, Zoning & Economic Development Committee and is scheduled for consideration June 26, 2019.

Revisions to Chapter 88, Zoning & Development Code are necessary to regulate where medical marijuana facilities may be located within the city. Staff will also recommend certain use standards including hours of operation for a medical marijuana dispensary facility.

Staff Comments:

Following the amendment to the state constitution, staff began learning about the amendment and how to regulate the use. In the constitution there are four use types, medical marijuana testing facility, medical marijuana dispensary, medical marijuana infused product manufacturing facility, and medical marijuana cultivation. The ordinance before you places these four different uses into our existing use groups. We recommend the following:

- Medical Marijuana Testing Facility

- Medical Office – permitted in O, all B, all D, M1 and M2
- Medical Marijuana Dispensary
 - Retail – permitted in all B, all D, and all M
- Medical Marijuana Infused Products Manufacturing Facility
 - Limited Manufacturing – permitted in B4 and all D w/ Special Use Permit, and all M
- Medical Marijuana Cultivation
 - Crop Agriculture – permitted in all B, D, M, and R but with SUP

The recommendation for the medical marijuana dispensary as a retail use is based on it acting the same as a pharmacy, which is allowed in retail. It should be noted that a pharmacy does not have a limitation on hours of operation, yet we are recommending the hours be a maximum of 8a.m. to 10p.m. due to the proximity potential of residential in some areas.

This ordinance also has a recommendation for separation of uses. Our research shows that other Missouri communities have approved anything from 1000’ down to no separation. The ordinance before you identifies 750’ as a starting point for the discussion. During a recent public listening session, we heard a recommendation of 300’ to match the liquor ordinance, we also had people request no separation as the dispensary is essentially a pharmacy. As for staff, our only area of concern is the difficulty of attempting to measure the separation as outlined in this proposed ordinance. The language in the ordinance comes from the state. Our standard language in chapter 88 is to measure property line to property line and as the “crow flies”.

88-820-15 SEPARATION DISTANCE

Unless specified otherwise, the required separation between certain land uses shall be measured in a straight line from the nearest property line of the lot occupied by or proposed to be occupied by the regulated use or development to the nearest property line of the other listed use.

There is some concern the proposed language will be onerous on staff to manage as the language requires a legal path, which could include the need to know where crosswalks and obstacles are located and our only tool is the parcel viewer, which the aerial is skewed from the actual property lines.

It should be noted, if the state allows for recreational marijuana use in the future, we will analyze our ordinance and make future recommendations.

Text Revision:

Text of the ordinance is shown as introduced by Councilmember Reed.

Affected text shown in **red font with yellow highlight**. Text to be deleted is ~~struck through~~, and text to be added is underlined.

Based upon public comments received at a listening session held June 12, 2019, staff has provided revisions and items for consideration by City Plan Commission and City Council. At this time, comments pertain to:

- hours of operation for a medical marijuana dispensary facility*
- external impacts, particularly odor*
- required separation distance between facilities and churches, schools, and day care centers*

*Reference to these items is shown in blue, italicized font, underlined.
Other minor corrections to be made are also noted.*

Ordinance 190430

Sections 88-805-04-P (Office); 88-805-04-V (Retail Sales); 88-805-05-B (Manufacturing, Production and Industrial Services); and 88-805-06 (Agricultural Use Group) would be repealed and new sections of like number and title would be enacted.

New sections 88-810-835 Marijuana/Marihuana; 88-810-836 Marijuana-Infused Products; 88-810-882 Medical Marijuana Cultivation Facility; 88-810-883 Medical Marijuana Dispensary Facility; 88-810-884 Medical Marijuana-Infused Products Manufacturing Facility; 88-810-885 Medical Marijuana Testing Facility; and 88-354 Medical Marijuana Facilities would be enacted.

88-805-04-P. OFFICE

1. ADMINISTRATIVE, PROFESSIONAL OR GENERAL OFFICE

Professional, governmental, executive, management, or administrative offices of private organizations or government agencies. Typical uses include administrative offices, law offices, architectural firms, insurance companies, and government offices.

2. MEDICAL OFFICE

Personal health services including prevention, diagnosis and treatment; rehabilitation services provided by physicians, dentists, nurses, and other health personnel; and medical testing and analysis services, **including medical marijuana testing facilities**. Typical uses include medical and dental offices, health maintenance organizations, blood banks, plasma centers, and government-operated health centers. Excludes use types more specifically classified, such as hospitals.

88-805-04-V. RETAIL SALES

Businesses involved in the sale, lease, or rent of new or used products or merchandise to consumers. Typical uses include drug stores, grocery stores, department stores, and apparel stores. **Also includes medical marijuana dispensary facilities.**

1. OUTDOOR RETAIL SALES - CLASS A

Outdoor retail sales - class A are permanent uses outside of a completely enclosed building or structure used to display goods for sale to the general public as part of and subordinate to retail sales or similar business establishment. This includes but is not limited to garden supplies, building supplies, and plant materials.

2. OUTDOOR RETAIL SALES - CLASS B

Outdoor retail sales - class B are permanent uses where the majority of the retail space is outdoors and items are for sale to the general public. This includes but is not limited to garden nurseries, manufactured home sales, and recreational and play equipment sales.

88-805-05-B. MANUFACTURING, PRODUCTION AND INDUSTRIAL SERVICES

1. ARTISAN

On-site production of goods by hand manufacturing, involving the use of hand tools and small-scale, light mechanical equipment. Typical uses include woodworking and cabinet shops, ceramic studios, jewelry manufacturing, and similar types of arts and crafts or very small-scale manufacturing uses that have no negative external impacts on surrounding properties.

- a. Artisanal Food and Beverage Manufacturing includes production of foods and beverages consumed and/or offered for sale on-site or produced for sale off-site and catering establishments, in accordance with 88-318.

2. LIMITED

Manufacturing of finished parts or products, primarily from previously prepared materials. Typical uses include: **medical marijuana-infused products manufacturing facilities,** printing and related support activities; machinery manufacturing; food manufacturing; computer and electronic product manufacturing/assembly; electrical equipment, appliance, component manufacturing/assembly; furniture and related product manufacturing/assembly; a contractor's establishment if the principal use is

fabrication and manufacturing; and other manufacturing and production establishments that typically have very few, if any, negative external impacts on surrounding properties.

3. GENERAL

- a. Manufacturing of finished or unfinished products, primarily from extracted or raw materials, or recycled or secondary materials, or bulk storage and handling of such products and materials. Typical uses include: asphalt plants, concrete plants, textile mills; textile product mills; apparel manufacturing; leather and allied product manufacturing; wood product manufacturing; paper manufacturing; chemical manufacturing; plastics and rubber products manufacturing; nonmetallic mineral product manufacturing; transportation equipment manufacturing; primary metal manufacturing; and fabricated metal product manufacturing. Also includes medical, scientific, or technology-related research establishments that produce odors, dust, vibration, noise, or other external impacts that are detectable beyond the property lines of the subject property.
- b. Industrial service firms engaged in the repair or servicing of industrial or commercial machinery, equipment, products, or by-products. Typical uses include: welding shops; machine shops; industrial tool repair; fuel oil distributors; solid fuel yards; laundry, dry-cleaning, and carpet cleaning plants; and photofinishing laboratories. Excludes uses classified as "repair or laundry services."

4. INTENSIVE

Manufacturing of acetylene, cement, lime, gypsum or plaster-of-Paris, chlorine, corrosive acid or fertilizer, insecticides, disinfectants, poisons, explosives, paint, lacquer, varnish, petroleum products, coal products, plastic and synthetic resins, and radioactive materials. Also includes smelting, animal slaughtering, and oil refining.

88-805-06 - AGRICULTURAL USE GROUP

The agricultural use group includes the following:

88-805-06-A. AGRICULTURE, CROP

The use of land for the production of row crops, field crops, tree crops; timber, bees, apiary products, or fur-bearing animals. **Also includes medical marijuana cultivation facilities.**

88-805-06-B. AGRICULTURE, ANIMAL

The feeding, breeding, raising or holding of cattle, swine, poultry or other livestock, whether held in a confinement area or open pasture. Also includes the killing, butchering or dressing of livestock, fowl, fish or other animals raised on the premises. Such killing, butchering or dressing shall be done within an accessory building (or principal building if animal agriculture is the principal use on the lot), which building shall be located not less than 200 feet from any property line.

88-354-MEDICAL MARIJUANA FACILITIES

88-354-01 APPLICABILITY

Medical marijuana facilities must be licensed by the Missouri Department of Health and Senior Services, or its successor entity as authorized by Article XIV section 1 of the Missouri Constitution.

88-354-02 STANDARDS AND CONDITIONS FOR MEDICAL MARIJUANA CULTIVATION FACILITIES, MEDICAL MARIJUANA DISPENSARY FACILITIES, MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURING FACILITIES, AND MEDICAL MARIJUANA TESTING FACILITIES.

All medical marijuana facilities licensed by the Missouri Department of Health and Senior Services, and authorized to operate under Article XIV, section 1 of the Missouri Constitution, shall operate according to the local regulations applicable to all properties in zoning districts which allow the use of medical marijuana facilities.

Staff note: Participants at the listening session recommended lesser distances than the 750 ft. proposed. Suggestions ranged from no separation to 500 ft. Consensus was that this code should align with the city's liquor code, which currently requires 300 ft. separation. It should be noted that the state statute proposes a maximum of 1,000 ft. A municipality may be less, but not more, restrictive.

88-354-02-A. ~~DISTANCE~~ SEPARATION REQUIREMENT FROM CHURCHES, DAY CARE CENTERS, AND SCHOOLS.

All medical marijuana facilities licensed by the Missouri Department of Health and Senior Services, and authorized to operate under Article XIV, section 1 of the Missouri Constitution, shall not be initially sited within seven hundred fifty (750)-300 feet of any

school, daycare day care center, or church which is operational or in existence at its present location, on or before the 4th day of June 4, 2019.

88-354-03 MEASUREMENTS SEPARATION REQUIREMENT MEASUREMENT

Measurements shall be made along the shortest path between the demarcation points that can be traveled by foot, using permitted public ingress or egress via streets, public walkways or easements and without trespassing on private property, jaywalking, or otherwise violating any municipal laws.

88-354-03-A. MEASUREMENT REQUIREMENT FOR FREESTANDING FACILITIES

In the case of a freestanding facility, the distance between the facility and the school, daycare day care, or church shall be measured from the external wall of the facility structure closest in proximity to the school, daycare day care, or church to the closest point of the property line of the school, daycare day care, or church.

88-354-03-B. MEASUREMENT REQUIREMENT FOR FACILITIES THAT ARE PART OF A LARGER STRUCTURE

In the case of a facility that is part of a larger structure, such as an office building or strip mall, the distance between the facility and the school, daycare day care, or church shall be measured from the property line of the school, daycare day care, or church to the facility's entrance or exit closest in proximity to the school, daycare day care, or church.

88-354-03-C. METHOD OF MEASUREMENT FOR FACILITIES LOCATED ON THE SAME PARCEL

Separation between a facility and a school, day care, or church located on the same parcel shall be measured from the front door of each use.

Staff note: Staff suggests that the following standards be included within the ordinance:

88-354-04 HOURS OF OPERATION

Medical marijuana dispensary shall have maximum hours of operation from 8:00 a.m. to 10:00 p.m.

88-354-05 STORAGE

All operations and any storage of materials, products, or equipment shall be within a fully enclosed building. No outdoor operations or storage shall be permitted.

88-354-06 EXTERNAL IMPACTS

All medical marijuana facilities shall install and operate a ventilation system that will prevent any odor of marijuana from leaving the premises of the facility. No odors shall be detectable by a person with a normal sense of smell beyond the property lines of the subject property. Further, the production process shall not produce dust, vibration, noise, or other external impacts that are detectable beyond the property lines of the subject property.

88-810-835 - MARIJUANA/MARIHUANA

Cannabis indica, Cannabis sativa, and Cannabis ruderalis, hybrids of such species, and any other strains commonly understood within the scientific community to constitute marijuana, as well as seed thereof and resin extracted from the plant and marijuana-infused products. Marijuana does not include industrial hemp containing a crop-wide average tetrahydrocannabinol concentration that does not exceed three-tenths of one percent on a dry weight basis, or commodities or products manufactured from industrial hemp.

88-810-836 - MARIJUANA-INFUSED PRODUCTS

Products that are infused with marijuana or an extract thereof and are intended for use or consumption other than by smoking, including, but not limited to, edible products, ointments, tinctures and concentrates.

88-810-882- MEDICAL MARIJUANA CULTIVATION FACILITY

A facility licensed by the State of Missouri to acquire, cultivate, process, store, transport, and sell marijuana to a Medical Dispensary Facility, Medical Marijuana Testing Facility, or to a Medical Marijuana-Infused Products Manufacturing Facility.

88-810-883 - MEDICAL MARIJUANA DISPENSARY FACILITY

A facility licensed by the State of Missouri to acquire, store, sell, transport, and deliver marijuana, marijuana-infused products and drug paraphernalia used to administer marijuana as provided for in this section to a qualifying patient, a primary caregiver, another Medical Marijuana Dispensary Facility, a Medical Marijuana Testing Facility, or a Medical Marijuana-Infused Products Manufacturing Facility.

88-810-884 - MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURING FACILITY

A facility licensed by the State of Missouri, to acquire, store, manufacture, transport, and sell marijuana-infused products to a Medical Marijuana Dispensary Facility, a Medical Marijuana Test Facility, or to another Medical Marijuana-Infused Projects Manufacturing Facility.

88-810-885 - MEDICAL MARIJUANA TESTING FACILITY

A facility certified by the State of Missouri, to acquire, test, certify, and transport marijuana.

Recommendation:

City Planning and Development Department staff recommends approval of revisions to Chapter 88, Zoning & Development Code, as noted.

Respectfully Submitted,

Diane M. Binckley, AICP
Deputy Director
City Planning and Development
diane.binckley@kcmo.org
816-513-8836