

**AGENDA REPORT
PLANNING AND ZONING COMMISSION MEETING
May 9, 2019**

SUMMARY

A request by the City of Columbia to amend Chapter 29, Sections 29-1.11 [Definitions], Section 29-3.2 [Permitted Use Table], and Section 29-3.3 [Use-Specific Standards] of the City Code relating to the creation of new definitions and permitted locations as well as use-specific standards governing the establishment and operation of medical marijuana facilities inside the City's corporate limits. **(Case #103-2019)**

DISCUSSION

On Nov. 6, 2018 Missouri voters approved Amendment 2 to permit state-licensed physicians to recommend marijuana for medical purposes to patients with serious illnesses and medical conditions. Amendment 2 includes provisions that obligate the Department of Health and Senior Services (DHSS) to promulgate regulations related to facilities engaged in medical marijuana cultivation, infused-product manufacturing, testing, and dispensing and associated activities. Furthermore, Amendment 2 afforded local governments the ability to enact ordinances governing the "time, place, and manner of operation" of these facilities as long as such ordinances do not conflict with the State's regulations and do not make the operation of the facilities "unduly burdensome."

In light of the authority granted under Amendment 2, the City has reviewed its zoning provisions and determined that changes to the Unified Development Code (UDC) are necessary to ensure the orderly integration of medical marijuana facilities within the city's land use pattern. To this end, staff has researched other jurisdictions land use regulations where medical/recreation marijuana is permitted, reviewed proposed DHSS regulatory standards, consulted with industry representatives and other legal professionals, as well as City leadership to generate the attached regulatory framework. Staff further performed land use analysis related to the proposed 1000-foot separation buffer. Following these activities the staff engaged with the Planning and Zoning Commission on April 11 and 18 in work session to discuss the proposed regulatory frame work.

Historically, amendment of the City's regulatory standards is generally been driven by an internal need to address new land use trends or emerging/recurrent issues. However, in the instance of medical marijuana the need for the changes proposed has been driven by legislative changes to which the City believes it must react in order to ensure that the health, safety, and general welfare of Columbians are protected and the goals and objectives contained within the City's Comprehensive Plan are adequately fulfilled.

The proposed regulatory framework includes three primary areas of amendments to the Unified Development Code (UDC). The areas that are proposed to be amended include Section 29.1-11 [Definitions], 29-3.2 [Permitted Use Table], and 29-3.3 [Use-specific Standards].

The proposed changes to Section 29-1.11 [Definitions} include the inclusion of four new definitions. The new definitions, identical to those in Amendment 2, will define Medical Marijuana Cultivation Facility, Medical Marijuana Dispensary Facility, Medical Marijuana-Infused Manufacturing Facility, and Medical Marijuana Testing Facility. These definitions are necessary since each medical marijuana facility is considered a unique land use having its own specific meaning in the context of cultivation, manufacturing, retailing, and testing activities.

The proposed changes to Section 29-3.2 [Permitted Use Table] have been made to identify where each of the medical marijuana facility types will be located. Each facility type is related to a current set of land use activities that are identified within the Permitted Use Table, but since each facility type is considered a land use of its own it must occur within the table before it would be considered an allowed within a specific district. In evaluating where each facility type should be located, staff gave consideration to the intensity of the facility, the facilities potential impact on surrounding development, and if the district in which the facility would be located included other similar uses.

The Permitted Use Table (Attachment A) proposes the following zoning districts as the locations where medical marijuana facility would be permitted as a “by-right” use. The “by-right” status would be subject to compliance with use-specific standards which are more fully discussed below.

<u>Facility Type</u>	<u>Permitted Zone District</u>
Cultivation	A (Agriculture) IG (Industrial)
Dispensary	M-C (Mixed-use Corridor) M-DT (Mixed-use Downtown) IG (Industrial)
Manufacturing	M-BP (Mixed-use Business Park) IG (Industrial)
Testing	M-C (Mixed-use Corridor) M-BP (Mixed-use Business Park), IG (Industrial)

In addition to identifying the above zoning districts as permissible locations for each facility type there was discussion between staff and the Commission about the potential expansion of such locations through use of a “conditional use permit”. Staff acknowledges that such a process may yield more locations; however, due to the necessity to establish minimal time, place, and manner of operation standards before the June 4 DHSS release of application criteria for State licensure a discussion of where conditional uses would be appropriate was, for now, considered beyond the scope of the proposed text amendment. Given this, staff is committed to engaging with the Commission to discuss possible conditional use standards in the future.

To ensure the orderly integration of the medical marijuana facilities within the city's land use pattern with the least amount of impact upon the public health, safety, and welfare, staff has proposed revisions to Section 29-3.3 [Use-specific Standards] of the UDC to add a new use-specific standard (qq). The proposed use-specific standards are intended to augment, not replace, the provisions created by DHSS and other state or federal agencies as well as address the unique operational characteristics these new facilities will create within the local environment. The use-specific requirements are conditions that any medical marijuana facility must comply with prior to being issued a building permit or a business license within the City.

The use-specific standards address the following topics: 1) buffering between schools, churches, and daycares, 2) Business licensure and local licensure limits, 3) multi-tenant building occupancy, 4) 2nd floor facility location within the M-DT district, 5) hours of operation limits for dispensaries, 6) location standards (i.e. enclosed vs non-enclosed), 7) use of mobile structures, 8) design criteria for visual integration, 9) odor mitigation, 10) waste generation, 11) signage, 13) exterior site/security lighting, 14) signage/equipment removal upon facility closure, and 15) cross-reference to Business License requirements for security, operations and management, and emergency plans.

During the public work sessions held on April 11 and 18, the aforementioned standards were discussed between the staff and Planning Commission. While there was general consensus on many of the topic areas several were noted as being of concern. The proposed buffering requirements, licensure limits, and M-DT location standards were those generating the majority of concern. The following rationale is offered to justify why such provisions have been retained in the proposed draft in light of the concerns expressed.

1000-foot buffering from schools, churches and day cares

The provision addressing the buffer requirement is consistent with the standards that were approved as a part of Amendment 2. This provision may be amended by the City Council; however, based upon the staff's mapping analysis (see attached City-wide Separation Map) there does not appear to be justification given the available locations to establish a business presence along the City's major transportation corridors or within established industrially zoned property. It is staff's belief that beginning with a 1000-foot buffer offers greatest opportunity to address potential changes rather than by beginning with a lessor standard only to find that unintended consequences necessitate a change to something more stringent.

Staff acknowledges that the proposed 1000-foot buffer impacts almost the entirety of the M-DT zoning district for potential medical marijuana facilities with the exception of a small area of property in the northeast corner of district. In light of the concerns expressed by Commissioners as well as proponents for increased access to facilities, specifically within M-DT district, staff conducted additional buffer analysis. Based on this analysis it would appear that a reduction of the separation standards to a distance of 500-feet (see attached 500-foot M-DT Separation Map) could permit property to the west of Providence Road for facility locations as well as a relatively small number of sites within the core of the downtown. It should be noted that several of the sites within the core of downtown are currently municipally controlled properties.

While such an adjustment could create potential opportunities for facility locations within the M-DT district, the provision requiring 2nd story location within the M-DT may still limit locations available. If Council chooses to relax the 2nd story requirement, such a modification could be limited to only the property within the “Urban General West” frontage type designation. This specific frontage type was envisioned as a more “suburban” form of development and presently does not have the same 2-story minimum building construction requirement applicable to other frontage types within the M-DT district.

The Commission was also concerned with the 1000-foot buffer as it related to limiting locations of facilities within M-N and M-C (Mixed-use Neighborhood and Corridor, respectively) zoning districts. The concerns focused generally on dispensaries and how such facilities are believed to be very similar to pharmacies or other retail establishments which were allowed uses within these districts. Again, in justification of the elimination of the M-N district as a zone appropriate for the location of such facilities staff performed additional land use analysis.

The attached M-N Separation Map identifies only the locations within the City that are currently zoned M-N. Overlaid upon these zones is the currently proposed 1000-foot buffer. As can be seen, the majority of these zones are located in close proximity to other neighborhood supporting services such as schools, churches, and daycares. This outcome should not be surprising given that the uses to which special buffering consideration are given generally locate within or very near existing population concentrations.

Given that dispensaries, as described by certain Commissioners, will be “cash heavy” businesses, there is concern that location of such facilities within close proximity to existing neighborhoods may create an unnecessary public safety risk given other available locations. Staff acknowledges the concerns expressed about having accessible facilities near potential patients; however, accessibility to other services within these areas are equally important. Permitting the location of dispensaries at the expense of other public safety and welfare concerns doesn’t solve the possible broader issue of public access to services generally.

Given these considerations, staff has chosen to not propose that such facilities be permitted within the M-N district. However, as indicated during the work session discussions, staff is committed to considering conditional use permitting requirements that may open such zones to future facility locations.

Local Licensure Limits

Local business licensure limitations are proposed within the use specific standards. These standards were modeled after similar Amendment 2 provisions and fall within our ability to regulate “time, place, and manner of operations”. We believe these standards to be a reasonable way by which the City of Columbia will accept its “proportional share” of the total number of facilities issued a license by the State. Of the four facility types listed in Amendment 2, only dispensaries are proposed to have a licensure cap which is tied to the US Congressional Districts within the State. All other facility type licenses are tied to the State’s population.

The proposed local licensure limits are based on the population thresholds established within Amendment 2 for all facility types except dispensaries. Dispensary licensure is based upon the total number licenses to be granted within the each US Congressional District, a maximum of 24, and dividing the population of the local US Congressional District by that number. This calculation allowed for 1 dispensary for approximately each 32,000 persons. Given the City's central location within the State and in efforts afford additional licensees the ability to locate within the City, the population per dispensary threshold was reduced to permit 1 dispensary per 20,000 in population or fraction thereof.

The licensure limitations, as noted, establish a basis by which the City can accept its proportional share of future facility licensures within its authority to regulate the time, place and manner of facility operations within corporate City limits. The limits could be subsequently modified as needs and demands are better understood with this new industry. As with the proposed buffer requirements, starting more conservative affords the City greater options to adjust in the future. Furthermore, establishment of the limitations also helps to further a major purpose of Amendment 2, to expand accessibility to all Missourians by dispersing facilities throughout the State.

M-DT Location Standards

The use specific standards propose that dispensaries located within the M-DT district must be located upon a second floor. This provision is within our authority to regulate "time, place, and manner of operations" and was identified following code research of city similar to that of Columbia (i.e. Boulder, Colorado). The provisions are a method by which to create a safer experience for patrons to such business by providing a level of anonymity while protecting the form based design of the Downtown area. The Police Department is supportive of the requirement as well.

Additionally, this provision may afford an opportunity to retaining a more significant level of pedestrian traffic at the street level which is a key objective of a form-based district. The design and operation of dispensaries generally do not generate significant pedestrian activity due to the security protocols that are employed in their operation. As such, staff does not believe that requiring a secondary story location would negatively impact future businesses.

Staff acknowledges that ADA accessibility should always be kept in mind when determining locations. However, it should be noted that as the use specific standards are presently proposed almost the entirety of the M-DT district is excluded from being a viable location for dispensary facilities. Where they are permitted, it is likely that a new structure would be required to be constructed as a 2-story building to comply with the provisions of the M-DT form-based standards.

Given the provision's presently limited applicability, the Police Department support of it, and the potential that such provision has in furthering the desired street-level activity envisioned within the M-DT zone, staff believes retaining the provision within the use specific standards is appropriate.

The proposed revisions to Sections 29-1.11 [Definitions], 29-3.2 [Permitted Use Table], and 29-3.3 [Use Specific Standards] shown within the attached UDC amendment are reasonable and necessary time, place, and manner of operation requirements for the proposed accommodation of medical marijuana cultivation, dispensing, infused product manufacturing and testing facilities within the City of Columbia. Further these proposed regulatory standards do not create “unduly burdensome” requirements that would prevent facilities from operating within the City of Columbia.

A recommendation of passage of the proposed standards will afford facility license applicants a clear understanding of what expectations the City has for such business as well as assist such applicants in completing the State’s licensure process, which requires the applicant to have a location at the time of submission. As with any proposed regulations, the standards initially enacted may be modified later to accommodate changes as new and more detailed information relating to these uses becomes available. The standards proposed, as noted, are what staff believes to be the minimum needed to provide integration of this new industry within the City.

STAFF RECOMMENDATION

Approval of the proposed text change as presented.

SUPPORTING DOCUMENTS

- Proposed Text Change.
- City-wide Separation Map
- 500-foot M-DT Separation Map
- M-N District Separation Map

Report prepared/approved by Patrick Zenner