



**CITY OF WELDON SPRING  
BOARD OF ALDERMEN  
WORK SESSION AT 6:00 P.M.  
ON WEDNESDAY, APRIL 17, 2019  
WELDON SPRING CITY HALL  
5401 INDEPENDENCE ROAD,  
WELDON SPRING, MISSOURI 63304**

**\*\*\*\*WORK SESSION AGENGA\*\*\*\***

- 1. CALL TO ORDER**
- 2. BUSINESS FOR DISCUSSION**
  - A.) – Medical Marijuana*
- 3. ADJOURNMENT**

**\*\*\* No votes are to be taken at a Work Session.**

## Packet Content

Attachment A:	Staff Review Comments Memo
Attachment B:	Draft Ordinance – City Attorney
Attachment C:	Amendment 2 Voting Results
Attachment D:	Alderman Baker Comments
Attachment E:	MML Magazine Article
Attachment F:	City of Maryland Heights Planning Report
Attachment G:	MML Webinar Presentation



# CITY OF WELDON SPRING

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## MEMORANDUM

To: Board of Aldermen Date: 4/11/19

From: Michael Padella, City Administrator & William C. Hanks, City Clerk

Subject: Medical Marijuana Staff Review

After researching the topic and review the draft legislation, the staff have the following comments:

1. Legislative Finding of Facts (675.040) – Is all of this necessary for the ordinance (pages 1-4)? It that we are paraphrasing Amendment 2 language and citing case law.
2. Definitions (675.050) – Suggest adding definitions for child care facilities and church in this section. Some definitions should be better defined so there isn't a grey area in our City Code.
3. There is a brief reference about zoning districts under 675.110 (page 7). Shouldn't the City also adopt an ordinance in the Land Use/Zoning regulations (Chapter 400) to compliment and solidify the allowable/non-allowable zoning districts and set forth land use regulations/parameters?
4. Are we overstepping our authority by including "college or university" (675.100 (B)(2) and "public park, public pool, or public/private recreational facility" (675.100 (B)(3) in the 1,000-foot distance requirement. It appears that secondary schools definition mention in amendment 2 are limited to K-12, with no mention about these other institutions. We don't want violate Amendment 2 by creating an unduly burdensome regulation.
5. Under 675.110(C), should the distance setback be building to building and not property line to property line per the Amendment 2 language?
6. Under 675.200, we need better clarification on the number of medical marijuana dispensaries and the maximum square footage for the facility. What about the other types of medical marijuana uses such as cultivation facilities, testing facilities and/or infused products manufacturing facilities? The draft bill only identifies "medical marijuana dispensaries" and not the other three uses.

7. Should we consider having the carrying of weapons/guns into a facility posted as being prohibited?
8. Under 675.250, are we sure about the age requirement and we did not mention primary caregiver?
9. Section 675.500 (A)(1) Should we require surveillance cameras in the waiting room/lobby area?
  - a. Can we require security videos be available without a search warrant (page 12)?
10. Should we reference the City Code business license requirement under Section 675.800?
11. Economic Development: Many communities are considering the possible positive economic development impact, especially as it relates to cultivation and manufacturing facilities (electric and gas consumption would be subject to the City's 5% franchise fee).
12. In closing after quickly reviewing the City's Zoning Map it appears that there are no locations within the existing city limits where any of the medical marijuana uses could legally go due to the 1,000-foot setback requirement because of existing secondary schools, daycare facilities and churches.

Our intention is that these comments will help facilitate any discussions for the Work Session on April 17, 2019.



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BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE PROVIDING FOR THE REASONABLE REGULATION OF MEDICAL MARIJUANA WITHIN THE CITY OF WELDON SPRING IN ORDER TO PROTECT THE PUBLIC HEALTH SAFETY AND WELFARE, AND MATTERS RELATING THERETO.**

**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WELDON SPRING, MISSOURI, AS FOLLOWS:**

**Section 675.05:** That the Board of Aldermen of Missouri Cities of the fourth class, Weldon Spring being such, have the authority to enact ordinances providing for the reasonable regulation of businesses and activities within the City limits in order to protect the public health and safety and maintain the peace, good government and welfare of the City and its trade and commerce as set out in Section 79.450 RSMo.

**Section 675.010:** This Chapter shall be known as "The Medical Marijuana Ordinance for the City of Weldon Spring, Missouri.

**Section 675.020 Scope.** The provisions of this Chapter shall apply within the municipal boundaries of the City of Weldon Spring, Missouri.

**Section 665.030 Purpose.** It is the purpose of this Chapter to regulate medical marijuana businesses and related activities to promote the health, safety and general welfare of the citizens of the City of Weldon Spring and to establish reasonable and uniform regulations to prevent the possible deleterious operation, location and concentration of medical marijuana businesses within the City of Weldon Spring. It is not the intent nor effect of this Chapter to deny access by qualifying patients to medical marijuana as provided by Amendment 2 which is codified as Article XIV, Section 1 of the Missouri Constitution. It is neither the intent nor effect of this Chapter to condone or legitimize the illicit possession, distribution or delivery of any controlled substance.

**Section 675.040 Legislative Findings of Fact.**

A. Based upon evidence concerning marijuana and secondary effects of medical marijuana facilities on the community including factual findings incorporated in the following documents listed below, the City Council finds that:

1. Since 1937, Federal law prohibits the cultivation, possession, sale and use of Marijuana without regard to a claimed medical need. See, Marijuana Tax Act of 1937. Pub.L. 75-238, repealed 1970, replaced by Comprehensive Drug Abuse Prevention and Control Act of 1970

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2. On August 23, 2013, the United States Department of Justice issued a memorandum entitled "Guidance for Marijuana Enforcement." The memorandum established eight guidelines for states regarding federal priorities in determining whether federal enforcement of controlled substance laws should commence against persons involved in specific activities related to marijuana cultivation and distribution. This Chapter places the highest priority on meeting the memorandum guidelines; particularly, guidelines related to protecting the public health and safety, restrictions on the availability of marijuana to minors, and the prevention of the illegal trafficking and profiteering in marijuana.

3. In 2014, the United States Congress enacted the Rohrabacher-Farr Amendment which prohibits the United States Department of Justice from spending funds to interfere with the implementation of state medical marijuana laws.

4. In 1996, through Proposition 215, Medical Marijuana was introduced in California.

5. As of 2018, 29 states and the District of Columbia permit some form of medical marijuana.

6. As of November 2018, 10 states and the District of Columbia have adopted laws legalizing marijuana for recreational use. See, Governing, (January 2019).

7. In November 2018, the voters of Missouri passed Amendment 2 to the Missouri Constitution legalizing the growing, manufacturing, transportation, and consumption of marijuana for medicinal purposes. Amendment 2 is codified as Article XIV, Section 1 of the Missouri Constitution and provides in Section 1.7(11) that:

Unless allowed by the local government, no new medical marijuana cultivation facility, medical marijuana testing facility, medical marijuana dispensary facility, or medical marijuana-infused products manufacturing facility shall be initially sited within one thousand feet of any then-existing elementary or secondary school, child day-care center, or church. No local government shall prohibit medical marijuana cultivation facilities, medical marijuana testing facilities, medical marijuana-infused products manufacturing facilities, or medical marijuana dispensary facilities, or entities with a transportation certification either expressly or through the enactment of ordinances or regulations that make their operation unduly burdensome in the jurisdiction. However, local governments may enact ordinances or regulations not in conflict with this section, or with

regulations enacted pursuant to this section, governing the time, place, and manner of operation of such facilities in the locality. A local government may establish civil penalties for violation of an ordinance or regulations governing the time, place, and manner of operation of a medical marijuana cultivation facility, medical marijuana testing facility, medical marijuana-infused products manufacturing facility, medical marijuana dispensary facility, or entity holding a transportation certification that may operate in such locality.

8. Do Medical Marijuana Centers Behave Like Locally Undesirable Land Uses? Implications for the Geography of Health and Environmental Justice, Urban Geography (2013).
9. Medical Marijuana Meets Zoning: Can You Grow, Sell, and Smoke That Here? American Planning association, Planning & Environmental Law, Vol. 62, No. 8, p.3 (Aug. 2010).
10. Analysis of the medical use of marijuana and its societal implications, J. Am. Pharm. Assoc. (Wash) (Mar-Apr 1998).
11. New Study Highlights the Social Impacts Of Cannabis Legalization In California, Forbes, (May 17, 2018).
12. The Health and Social Effects of Nonmedical Cannabis Use, World Health Organization, (2016.)
13. The average medicinal marijuana cardholder is a 32 year old white male with no history of chronic illness and a history of substance abuse. See, The Marijuana Experiment, Considerations of Legalization In Illinois, Illinois Association for Behavioral Health (power-point presentation).
14. Local Impacts of Commercial Cannabis, International City/County Management Association, (September 2018).
15. The outright prohibition of medical marijuana businesses is in contravention of Amendment 2; but reasonable time, place and manner regulation of such businesses so as to curtail and prevent pernicious secondary effects is both permissible and desirable. See, Section 7(11) of Amendment 2.
16. When marijuana plants begin to flower and for a period up of two months or more during the growing season, produce a pungent and strong odor detectable beyond property boundaries and that can adversely impact the peace and enjoyment of persons on nearby properties.

17. The public health, safety, welfare and convenience of the residents of the City require that medical marijuana businesses and their locations be regulated in order to reduce the potential for harm and in order to preserve and protect the quality of life in the residential and business environs of the City.

18. It is the duty and responsibility of the Mayor and ~~BOARD OF ALDERMEN~~ to protect and preserve the public health, safety and welfare of the City and its residents, the stability of the value and use of property within the City and the character of its neighborhoods and developments.

19. In order to preserve the public peace and good order and to safeguard and promote the health, safety and welfare of the City and its citizens, therefore, it is necessary and advisable to regulate and restrict the location and operation of medical marijuana businesses.

20. The general welfare, health, morals and safety of the citizens of this City will be promoted by enactment of this Chapter.

21. The requirements of this Chapter advance the public health, safety and welfare by providing regulations governing the location and operation of medical marijuana businesses within the municipal boundaries of the/

#### **Section 675.050 Definitions.**

A. For the purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AMENDMENT 2: A voter initiated amendment to the Missouri constitution adopted November 6, 2018, codified as section 1 of article 14 to the Missouri constitution.

DEPARTMENT: means the state of Missouri Department of Health and Senior Services, or its successor agency.

**FACILITY:** means a Medical Marijuana Cultivation Facility, Marijuana Infused Products Manufacturing Facility, Medical Marijuana Testing Facility or Medical Marijuana Dispensary Facility, or any combination thereof, or any business related to the possession, sale, use, cultivation or manufacture of marijuana.

**IDENTIFICATION CARD:** means the card issued by the Missouri Department of Health and Senior Services that permits a qualified patient or primary caregiver to purchase medical marijuana.

**LICENSEE:** An entity issued a license or certification by the Department for the cultivation, manufacture, dispensing, sale, testing, tracking, and transportation of marijuana for medical use.

**MARIJUANA:** or "Marihuana" means *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, resin extracted from the plant and marijuana-infused products. "Marijuana" or "Marihuana" 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.

**MARIJUANA-INFUSED PRODUCTS:** means 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.

**MEDICAL MARIJUANA CULTIVATION FACILITY:** means a facility licensed by the Department to acquire, cultivate, process, store, transport, and sell marijuana to a Medical Marijuana Dispensary Facility, Medical Marijuana Testing Facility, or to a Medical Marijuana-Infused Products Manufacturing Facility.

**MEDICAL MARIJUANA DISPENSARY FACILITY:** means a facility licensed by the Department, 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.

**MARIJUANA-INFUSED PRODUCTS MANUFACTURING FACILITY:** means a facility licensed by the Department to acquire, store, manufacture, transport, and sell marijuana-infused products to a Medical Marijuana Dispensary Facility, a Medical Marijuana Testing Facility, or to another Medical Marijuana-Infused Products Manufacturing Facility.

**MEDICAL MARIJUANA TESTING FACILITY:** means a facility certified by the Department to acquire, test, certify, and transport Marijuana.

**PATIENT or QUALIFYING PATIENT:** has the meaning provided in Amendment 2 and any other related regulations promulgated by the state of Missouri.

**PRIMARY CAREGIVER:** has the meaning provided in Amendment 2 and any other related regulations promulgated by the state of Missouri.

B. In addition to the definitions provided in subsection A of this section, the other defined terms in Amendment 2 are incorporated into this chapter by reference.

## ARTICLE II

### Location, Building and Signage Regulations

#### Section 675.100 Limitation on Delivery.

Each Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility, Medical Marijuana-Infused Products Manufacturing Facility or Medical Marijuana Dispensary Facility shall be operated from a permanent location. No Facility described in this section shall be permitted to deliver or operate from a movable, mobile or transitory location. No Medical Marijuana Dispensary Facility shall dispense marijuana via drive-thru window or lane.

**B-7****Section 675.110 Prohibited Locations.**

A. No Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility, Medical Marijuana-Infused Products Manufacturing Facility or Medical Marijuana Dispensary Facility shall be located in any of the following zoning districts:

**RESIDENTIAL OR COMMERCIAL DISTRICTS**

B. No Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility, Medical Marijuana-Infused Products Manufacturing Facility or Medical Marijuana Dispensary Facility shall be located at the following locations:

1. within ~~one~~ <sup>ONE THOUSAND</sup> hundred feet (1,000') of a licensed childcare facility;
2. within one thousand feet (1,000') of any educational institution or school, college or university, either public or private;
3. within one thousand feet (1,000') of any public park, public pool or public or private recreational facility;
4. within one thousand feet (1,000') of any halfway house or correctional facility;
5. within one thousand feet (1,000') of any other Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility, Medical Marijuana-Infused Products Manufacturing Facility or Medical Marijuana Dispensary Facility; or
6. within any building or structure that contains a residential unit.

C. The distances described in subsection B of this section shall be computed by direct measurement from the nearest ~~property~~ <sup>building</sup> line of the land ~~used~~ <sup>NOT</sup> for the above purposes to the nearest portion of the building housing the Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility, Medical Marijuana-Infused Products Manufacturing Facility or Medical Marijuana Dispensary Facility, using a straight line.

D. It shall be unlawful for any person to distribute, transmit, give, dispense or otherwise provide medical marijuana as a home occupation.



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E. No Facility or the activities within the Facility shall emit an odor or in any way cause a nuisance as set forth in this code.

#### Section 675.120 Sign Requirements.

All signage for a Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility, Medical Marijuana-Infused Products Manufacturing Facility or Medical Marijuana Dispensary Facility shall comply with the requirements of this code. **SIGNAGE IS TO BE DISCRETE AND NOT OBTRUSIVE OR DISTRACTING.**

#### Section 675.130 Required Warnings to be Posted.

There shall be posted in a conspicuous location in each Facility a legible sign containing the following warnings:

- A. a warning that diversion of marijuana for nonmedical purposes is a violation of state law;
- B. a warning that the use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle while under the influence of or impaired by marijuana;
- C. a warning that loitering in or around a Facility is prohibited;
- D. a warning that possession and distribution of marijuana is a violation of state and federal law; and
- E. a warning that no one under the eighteen (18) years of age is permitted within the Facility.
- F. **A WARNING THAT NO GUNS ARE ALLOWED ON PREMISES EXCEPT FOR POLICE.**

### ARTICLE III

#### Limitation on Number, Size, Floor Plan, Hours of Operation, Sale of Alcohol, Age Restrictions

##### Section 675.200 Limitation on Number and Size.

There shall be no more than ONE Medical Marijuana Dispensary Facilities in the City, and Facility shall be limited to a floor plan of two thousand (2,000) square feet, **MAXIMUM.**



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**Section 675.210 Hours of Operation.**

A Medical Marijuana Dispensary Facility may open no earlier than nine o'clock (9:00) A.M. and shall close no later than seven o'clock (7:00) P.M. the same day. A Medical Marijuana Dispensary Facility may be open seven (7) days a week.

**Section 675.220 Separation of Dispensing Area from Waiting Area.**

The waiting area and the area of a Medical Marijuana Dispensary Facility where marijuana or marijuana-infused products are physically delivered to a qualifying patient or primary caregiver shall be separated by a solid wall and solid door so that persons in the waiting area are obstructed from observing the delivery of the marijuana or marijuana infused products to the qualifying patient or primary caregiver.

**Section 675.230 Display of Marijuana.**

No marijuana or marijuana-infused product shall be displayed so as to be visible through glass, windows, or doors by a person of normal visual acuity standing at the outside perimeter of a Facility.

**Section 675.240 Sale of Alcohol Prohibited.**

The sale or consumption of alcohol within a Facility is prohibited.

**Section 675.250 Age Restrictions.**

No person under the age of eighteen (18) years shall be allowed in any portion of a Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility, Medical Marijuana-Infused Products Manufacturing Facility or Medical Marijuana Dispensary Facility, except that a qualifying patient who is under the age of eighteen years who has been emancipated by a court order and a qualifying patient under the age of eighteen years when accompanied by the qualifying patient's parent or guardian. The entrance to a Facility shall be clearly and legibly posted with notice indicating that persons under the age of eighteen (18) are precluded from entering the premises.

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**Section 675.260 Requirement to Display Identification Card; Failure to Exhibit Identification Card; Possession or Production of Fraudulent Identification Card.**

- A. A Medical Marijuana Dispensary shall require every qualifying patient or primary caregiver to display the medical marijuana identification card or other proof of eligibility of purchase to enter the Medical Marijuana Dispensary and at the time of each purchase.
- B. It shall be unlawful for a qualifying patient or primary caregiver when in the possession of marijuana to fail to exhibit on the demand of any peace officer a medical marijuana identification card.
- C. It shall be unlawful for any person to possess, produce, manufacture, sell, or otherwise distribute a fraudulent document, photocopy, or image displayed on a mobile electronic device intended to serve as a medical marijuana identification card.

**Section 675.270 Requirement to Display License.**

Every Facility shall display its state issued <sup>LICENSE AS WELL AS A CITY BUSINESS LICENSE</sup> in a location visible upon entry into the Facility.

**ARTICLE IV**

**Packaging and Limitations on Quantity Dispensed**

**Section 675.300 Packaging and Limitations on Quantity Dispensed.**

A Medical Marijuana Dispensary Facility shall not dispense more than four (4) ounces of a usable form of medical marijuana per patient in a thirty day period, except as otherwise allowed by law [Art. 2, sec 3(13)]. All marijuana sold or otherwise distributed shall be in a sealed container. Such packaging shall have a label that indicates the quantity and advises the purchaser that the marijuana is intended for use solely by the patient, and that any resale or redistribution to any third person is a criminal violation.

**ARTICLE V****On Site Consumption or Cultivation, Sale of Paraphernalia; Disposal****Section 675.400 On Site or Public Consumption.**

It shall be unlawful to consume, inhale or personally use of marijuana or medical marijuana-infused products on or within the premises of a Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility, Medical Marijuana-Infused Products Manufacturing Facility, Medical Marijuana Dispensary Facility, or in a public place, except that a Medical Marijuana Testing Facility may consume marijuana during the testing process and only as the consumption relates to the testing process. **A SURVEILLANCE CAMERA SHALL BE OPERABLE AT ALL TIMES TO INSURE COMPLIANCE WITH THIS AND OTHER REQUIREMENTS OF THIS CHAPTER ORDINANCE**

**Section 675.410 On Site Cultivation.**

The growing or cultivation of marijuana on the premises of a Medical Marijuana-Infused Products Manufacturing Facility, Medical Marijuana Testing Facility or Medical Marijuana Dispensary Facility is prohibited.

**Section 675.420 Sale of Paraphernalia.**

Paraphernalia as defined in section 195.010(17) (l)a through (l)m, excluding (l)f of the Revised Statutes of Missouri, as may be amended, may be lawfully be sold at a Medical Marijuana Dispensary Facility. Such items may not be publicly displayed and may be sold, displayed and provided only to patients or primary caregivers of patients.

**Section 675.430 Disposal of Marijuana and Marijuana Infused Products.**

No person shall dispose of marijuana or marijuana-infused products in an unsecured waste receptacle not in possession or control of a licensee and designed to prohibit unauthorized access.

**ARTICLE VI****Security****Section 675.500 Security Requirements.**

A. A Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility, Medical Marijuana-Infused Products Manufacturing Facility or Medical Marijuana Dispensary Facility shall provide adequate security on the premises including, but not limited to, the following:

1. Surveillance. Security surveillance cameras installed to monitor each entrance to the Facility along with the interior and exterior of the premises to discourage and to facilitate the reporting and investigation of criminal acts and nuisance activities occurring at the premises. Security video shall be preserved for at least ninety (90) days, and be made available to law enforcement officers upon demand and without a search warrant.
2. Inventory. All salable inventory of marijuana must be kept and stored in a secured, locked manner.
3. Safe. A locking safe or secure vault permanently affixed or built into the premises to store any currency on site. Marijuana, including plants, and marijuana-infused products shall be secured in a safe or vault permanently affixed or built into the premises. The building will be designed to prevent vehicle crash and grab thefts.
4. Lighting. Exterior lighting that illuminates the exterior walls of the Facility premises but is otherwise discrete and not obtrusive or distracting.
5. Alarm System. Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition within the Facility at all times.
6. Emergency Contact. Each Facility shall provide the chief of police with the name, cellular telephone number, electronic mail address, and facsimile number of an on-site Facility employee to whom the City may provide notice of any operating problems associated with the Facility. It shall be the responsibility of the Licensee to keep up to date the contact information of the Facility employee.
7. Access. Only an employee, qualified patient or primary caregiver shall be permitted in a Medical Marijuana Dispensary Facility.

## ARTICLE VII

### Recordkeeping

#### Section 675.600 Ledger Required.

A. A Medical Marijuana Dispensary Facility shall keep a ledger, for three (3) years from the creation of the record, which shall record the following information, and which shall be made available to the city upon demand:

1. The quantities of medical marijuana dispensed in each transaction;
2. The type of medical marijuana dispensed;
3. The total amount paid by the patient or primary caregiver for the transaction for each of the goods and services provided, before relevant taxes;
4. The patient identifying information permitted by law;
5. Confirmation that the employee confirmed the identity of the patient or primary caregiver receiving the medical marijuana with a valid state issued identification; and
6. The date and time dispensed.

## ARTICLE VIII

### Operating Plans

#### Section 675.700 Operating Plans.

A. As a condition of processing of a business license application, a Facility operator shall provide at the time of filing the business license application a detailed operations plan and, upon issuance of a license, shall operate the Facility in accordance with the plan. Such plan shall include:

1. **Floor Plan.** A plan showing the layout of the Facility and the principal uses of the floor area depicted. A Medical Marijuana Dispensary Facility shall have a lobby waiting area at the entrance to the center to receive clients, and a separate and secure designated area for dispensing medical marijuana to qualified patients or designated primary caregivers. The primary entrance of any stand-alone facility shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.
2. **Storage.** A Facility shall provide a storage plan in compliance with section 675.600.A.2 of this Chapter.
3. **Security Plan.** A Facility shall provide a security plan in compliance with section 675.600 of this chapter.
4. **Lighting Plan.** A Facility shall provide a lighting plan in accordance with this code. Such plan shall also include any illumination for the purposes of cultivation and any mitigation controls to lessen adverse impacts to the surrounding properties.
5. **Odor Controls.** A Facility shall provide a plan for the mitigation and control of odors and other environmental impacts which may emanate from a Facility. Such plan shall

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describe the ventilation system for the premises. Appropriate ventilation systems to prevent any odor of marijuana or fumes from leaving the premises of a Facility or other changes to a Facility may be required to abate a public nuisance. No Facility shall emit any odor of marijuana which is capable of being smelled by a person of ordinary senses outside the boundary of the lot on which the Facility is located.

6. **Product and Service Description.** A description of the products and services to be provided by the Facility.

7. **Employee List.** A list of all employees of the Facility.

## **ARTICLE IX**

### **Licenses, Fees and Taxes**

#### **Section 675.800 Business License Required; Penalty for Noncompliance.**

Each Facility shall at all times possess a current City business license. By obtaining a City business license, the Facility Licensee irrevocably consents to the immediate closure and cessation of operation of the Facility in addition to all other penalties or remedies available by law for the failure to possess a current City business license.

#### **Section 675.810 Fees and Taxes.**

At all times, a Facility Licensee shall remain current and not delinquent on any real or personal property tax, sales tax or fee.

#### **Section 675.820 Sales Taxes.**

Each Medical Marijuana Dispensary Facility shall pay sales tax on all medical marijuana, and other tangible personal property sold at the Facility.

## **ARTICLE X**

### **Administration, Enforcement, Violations and Penalties**

**Section 675.900 Administration and Enforcement.**

The City's Law Enforcement Officers shall be responsible for administering and enforcement of this Chapter. The Law Enforcement Officer is authorized to inspect any Facility to determine compliance with this Chapter.

**Section 675.910 Penalty; Revocation of Business License.**

A. It shall be unlawful for any person to violate any of the provisions of this Chapter. Upon conviction thereof, such person shall be fined up to the statutory maximum fine as provided by Missouri law for a municipal ordinance violation or be punished by imprisonment as provided by Missouri law for a municipal ordinance violation or be punished by both such fine and imprisonment. Each day's violation of or failure, refusal or neglect to comply with any provision of this Chapter shall constitute a separate and distinct offense. The penalties provided in this Section are cumulative and in addition to and are separate from any civil action to enforce this Chapter.

B. Violation of any provision of this chapter by a Licensee shall result in forfeiture of the Licensee's City business license.

**Section 675.920 Injunction.**

With or without the initiation of criminal prosecution or any other legal proceedings, the City may apply to the appropriate court for injunctive relief, which would require the correction or abatement of any violation of this Chapter. The initiation or exhaustion of one (1) of these enforcement proceedings shall not be a prerequisite to the initiation of any other of these enforcement proceedings. Different types of enforcement proceedings may be pursued concurrently.

**Section 675.930 Conflicting Law.**

All ordinances, codes, regulations and orders or parts thereof in conflict with the provisions of this Chapter shall not apply.

**Section 675.940 No Waiver Of Governmental Immunity.**



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In adopting this chapter, the ~~City Council~~ <sup>Board of Aldermen</sup> is relying on and does not waive or intend to waive any of the monetary limitations or any other rights, immunities and protections provided by the Sections 537.600 and 537.610 RSMo., as from time to time amended, or any other limitation, right, immunity, or protection otherwise available to the City, its officers or its employees.

#### **Section 675.950 No City Liability.**

By accepting a business license, a Facility Licensee releases the City, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of Facility owners, operators, employees, clients or customers for a violation of city, state or federal laws, rules or regulations. The CITY CLERK may require a Facility Licensee to execute a written instrument confirming the provisions of this Chapter.

#### **Section 675.960 Indemnification of City.**

By accepting a business license, a Facility Licensee, jointly and severally, if more than one, agrees to indemnify and defend the city, its officers, elected officials, employees, attorneys, agents, and insurers, against all liability, claims and demands, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the operation of a Facility that is the subject of Amendment 2. The Facility Licensee further agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees. The CITY CLERK may require a licensee to execute a written instrument confirming the provisions of this chapter.



**Section 675.970 Other Laws Remain Applicable.**

The provisions of this chapter do not protect Facility Licensees, operators, employees, customers and clients of a Facility from prosecution pursuant to any laws that may prohibit cultivation, sales, use or possession of controlled substances. In addition, as of the date of the adoption of this chapter the cultivation, sale, possession, distribution and use of marijuana remain violations of federal and state law (except for conduct covered by Amendment 2), and this chapter affords no protection against prosecution under such federal and state laws. Licenses, operators, employees, customers and clients of a Facility assume any and all risk and any and all liability arising or resulting from the operation of a Facility under any city, state or federal law. Further, to the greatest extent permitted by law, any actions taken under the provisions of this chapter by any public officer or officers, elected or appointed officials, employees, attorneys and agents of the City shall not become a personal liability of such person of the City.

**Section 675.980 Severability.** It is hereby declared to be the intention of the Board of Aldermen that the sections, paragraphs, sentences, clauses and phrases of this chapter are severable, and if any phrase, clause, sentence, paragraph or section of this chapter shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this chapter, since the same would have been enacted by the Board of Aldermen without the incorporation in this chapter of any such unconstitutional phrase, clause, sentence, paragraph or section.

**Section 675.990** That this Ordinance shall be in full force and effect upon its enactment and approval

**READ TWO TIMES AND PASSED BY THE BOARD OF ALDERMAN OF THE CITY OF WELDON SPRING, MISSOURI. THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019 AT A REGULARLY SCHEDULED BOARD MEETING.**

**Attest:**

\_\_\_\_\_  
**CITY CLERK**

\_\_\_\_\_  
**MAYOR**

**APPROVED BY THE MAYOR OF THE CITY OF WELDON SPRING, MISSOURI, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.**

**Attest:**

\_\_\_\_\_  
**CITY CLERK**

\_\_\_\_\_  
**MAYOR**

# Amendment 2 (Medical Marijuana) Voting Turnout/Results - 11/06/2019

Polling Place Number	Polling Place Name	Location	Register Voters	Total Votes	Yes	Yes (%)	No	No (%)
150	Timberwood	Bethesda Baptist Church	1,151	711	447	62.87%	264	37.13%
152	Woodglen	Francis Howell Middle School	2,391	1,491	999	67%	492	33%
221	Weldon Spring	Messiah Lutheran Church	1,360	863	530	61.41%	333	38.59%
227	Whitmoor	St. John's United Church of Christ	3,527	2,057	1,263	61.40%	794	38.60%
237	Wolfrum	Mary Emily Bryan Middle School	1,930	1,149	639	55.61%	510	44.39%

<b>Total</b>	10,359	6,271	3,878	61.84%	2,393	38.16%
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**City Clerk**

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**From:** Gerald Baker <gnbaker@sbcglobal.net>  
**Sent:** Thursday, April 11, 2019 3:07 PM  
**To:** City Administrator; Andy Clutter; Don Schwaab; Phil Martiszus; Janet Kolb; Alderman Hillmer Ward 1; Don Licklider; City Clerk  
**Subject:** Cannabis-Marijuana Regulation Discussion

With the pending review and discussion about cannabis/marijuana regulation by the City, I offer the following information and suggestions for consideration.

1. Cultivation(open field or enclosed building), manufacture and sales of cannabis/marijuana could be limited to a specific zoning classification like "planned commercial" zoning.
2. Cannot be located within 1,000 feet of schools, daycare, nursing home, churches or residential paroperties
3. Business license required
4. Background check for all employees. No drug related convicted employees allow.
5. No positive drug tested employees allowed
6. Medical marijuana sales only by prescription from a licensed physician and filled at a licensed pharmacy
7. CBD lotion sales at licensed retail business only
8. No cannabis/marijuana enhanced food, candy or drink can be sold without FDA approvals of the product.
9. No cannabis/marijuana enhanced food, candy or drink can be manufactured in the City.
10. A concern from recent Post Dispatch articles report variations on percentage of cannabis/marijuana content has not been identified as safe for people. The difference between addictive and non-addictive forms and the comparative restrictions and/or approval could be a problem for regulation enforcement.
11. Post Dispatch reports the number of applications and thereby production capacity for cultivation exceeds the market for medical marijuana in the State of Missouri. Without sufficient demand , the excess supply of cannabis/marijuana cultivated product could be steered to the black market of illegal product. This is an enforcement issues for state government to address. The best our City can do is regulate cultivation,manufacture and sales of legal product.
12. What type of fine for violation of the City's regulating ordinance should be established.

With input from our City Attorney and reviews by City Staff, the BOA in a work session discussion can provide input so ordinances regulating the subject of cultivation, manufacture and sales of cannabis/marijuana products can be established.

I will be unable to attend the pending BOA work session but would ask for the above questions and suggestions be addressed by City Attorney, Staff and BOA members. We can look forward to the resultant regulatory ordinance on this subject. As noted in our recent BOA meeting, the time to act is now.

Thanks  
 Gerry

# Medical Marijuana And Amendment 2

## *The Times, They Are A Changin'*

After the passage of Amendment 2 on Nov., 6, 2018, Missouri became the 32nd state in the country to allow for the use of marijuana as a treatment for certain, specified medical conditions. Now enacted as Article XIV of the Missouri Constitution, the overarching purpose of Amendment 2 is to allow for the cultivation, production, transportation, sale, purchase and administration of medical marijuana; to ensure patient access to medical marijuana; and to make changes to Missouri law necessary to implement Amendment 2.

The purpose of this article is to give an overview of Amendment 2, including discussion on what type of facilities and identification cards the amendment allows for, and discuss specific topics of concern to local government entities.

### Medical Marijuana Facilities, Identification Cards, And The Role Of The Department Of Health And Senior Services

As stated above, the overarching purpose of Amendment 2 is to allow for the cultivation, production, transportation, sale, purchase and administration of medical marijuana. To accomplish this purpose, Amendment 2 creates four types of medical marijuana facilities and three types of identification cards while granting the Department of Health and Senior Services (DHSS) the ability to regulate the licensing and approval of the facilities and identification cards. This section will first discuss the different types of facilities and identification cards and then outline DHSS's role in regulating facilities and approving identification cards.

### Medical Marijuana Facilities

Amendment 2 creates and designates four types of medical marijuana facilities: (1) medical marijuana cultivation facilities; (2) medical marijuana infused products facilities; (3) medical marijuana dispensary facilities; and (4) medical marijuana testing facilities. The names used by the drafters of Amendment 2 for each type of facility generally describes

the role of each facility: Medical marijuana cultivation facilities cultivate medical marijuana; medical marijuana infused products facilities infuse medical marijuana; medical marijuana dispensary facilities dispense medical marijuana to qualifying patients and primary caregivers; and medical marijuana testing facilities are certified by DHSS to test medical marijuana.

In addition to defining the roles of each of the medical marijuana facilities, Amendment 2 authorizes DHSS to limit the number of each type of facility. Specifically, Amendment 2 allows DHSS to limit medical marijuana cultivation facilities to 1 per 100,000 inhabitants (roughly 61 statewide); medical marijuana infused products facilities to 1 per 70,000 inhabitants (roughly 87 statewide); and medical marijuana dispensary facilities to 24 per the 8 United States Congressional Districts in Missouri (roughly 192 statewide).

### Identification and Primary Caregiver Cards

Amendment 2 creates three, separate identification cards that may be obtained by persons who have a qualifying condition or are designated as a primary caregiver to an individual with a qualifying condition. The three identification cards established by Amendment 2 are (1) qualifying patient identification cards; (2) qualifying patient cultivation card; and (3) primary caregiver identification cards.

Similar to how the various titles given to medical marijuana facilities describe their role in the production of medical marijuana, the titles given to the different identification cards also describe their role in the administration of medical marijuana. Qualifying patient identification cards are for persons with qualifying conditions, discussed below, to identify themselves as having the right to possess medical marijuana. Qualifying patient cultivation cards allow for qualifying patients to cultivate up to six flowering marijuana plants in an enclosed, locked facility for their personal use. Finally, primary caregiver identification cards are for people



Photos courtesy of Jennifer Silverberg Photography

who qualify to act as a caregiver for qualifying patients and allows primary caregivers to possess, administer and cultivate medical marijuana under certain circumstances for qualifying patients.

To be considered a qualifying patient, and thus be eligible to receive a qualifying patient identification card or qualifying patient cultivation card, an individual must first obtain certification from a physician that they have a qualifying condition. There are 10 qualifying conditions; however, several of the listed conditions are broader than one, single condition. Qualifying conditions include cancer; epilepsy; glaucoma; chronic medical conditions that cause severe, persistent pain; and chronic medical conditions usually treated with prescription medication that could lead to dependence. A full list of qualifying conditions can be found in Article XIV, Section 2, Subsection 15.

### The Role Of The Department Of Health And Human Services In The Medical Marijuana Landscape

The role of the DHSS under Amendment 2 is to act primarily as the regulatory body overseeing medical marijuana. In this role, DHSS promulgates rules regarding medical marijuana facilities and holders of identification cards, issues licenses to medical marijuana facilities, and approves applications for persons seeking an identification card. Amendment 2 further grants DHSS the authority to issue rules relating to a broad variety of topics concerning medical marijuana, including control of information and product displays; instructions or guidance for local governments; security requirements for licensed or certified premises; the reporting and transmittal of tax payments; and seed-to-sale tracking systems.

Amendment 2 sets out timelines for DHSS to implement their regulatory scheme. The timeline put in place by Amendment 2 is as follows:

**June 4, 2019:** Application forms and instructions for medical marijuana facilities, qualifying patients, and caregivers will be available.

**July 4, 2019:** Applications for identification cards for qualifying patients and caregivers will begin to be accepted.

**Aug. 3, 2019:** Facility applications will begin to be accepted.

**Aug. 4, 2019:** Deadline for approval of applications for identification cards accepted on July 4, 2019

**Dec. 31, 2019:** Deadline for approval of facility applications accepted on Aug. 3, 2019.

### Provisions Of Amendment 2 With Direct Impacts On Local Government Entities

While Amendment 2 presents significant issues for both public and private entities, there are certain provisions that are of distinct concern for municipalities, including provisions relating to municipal regulatory authority, policing and taxation. This section will discuss various provisions from Amendment 2 that directly relate to cities, specifically provisions that deal with municipal regulation and policing of medical marijuana, employment and taxation.

### Municipal Regulation Under Amendment 2

As discussed previously, one of the overarching purposes of Amendment 2 is to ensure patient access to medical marijuana. One way that Amendment 2 accomplishes this goal is by partially preempting municipal regulatory authority over medical marijuana. Amendment 2 expressly prohibits municipalities from banning or practically banning medical marijuana facilities through overly burdensome regulations. Even though Amendment 2 restricts municipal regulatory authority, it does provide two specific avenues for municipal regulation. The first, is the Amendment 2's imposed, 1000-foot separation requirement; the second is Amendment 2's grant of authority to local governments to regulate the "time, place and manner" of the operation of medical marijuana facilities, as long as the regulations are not unduly burdensome.

Amendment 2 includes a default land-use regulation in



that it explicitly prohibits medical marijuana facilities from originally sitting within 1,000 feet of any elementary or secondary school, child daycare center and church unless a city decides to decrease the spacing requirement. There has been significant discussion around this provision, mainly regarding where to start and end the 1,000-foot measurement. Due to Amendment 2's specific reference to the actual facility in its separation provision, it is reasonable to interpret that the 1,000 feet should be measured from the building housing the medical marijuana facility to the building housing the protected entity (e.g., elementary or secondary school, child daycare center, or church). However, Section 311.080 RSMo contains a similar separation requirement for premises licensed to sell intoxicating liquor and churches and schools. In *State ex rel. Casey's General Stores, Inc. v. Kissinger* the proper measurement for Section 311.080 RSMo's separation requirement was determined to be from the property line of the address listed on the liquor license to the protected building.

Amendment 2 also permits cities to adopt regulations regarding the "time, place and manner" of the operation of medical marijuana facilities, as long as those regulations are not "unduly burdensome" on the operation of the medical marijuana facility. While this grant of authority is narrow, it is the largest and most important, grant of authority to cities in Amendment 2. It potentially implicates various municipal regulatory schemes, including zoning and business license authority.

The word "time" in "time, place and manner" clearly means that cities may regulate the hours of operation of medical marijuana facilities so long as those regulations are not unduly burdensome. The use of the phrase "place and manner" appears to allow cities to adopt reasonable zoning and business license regulations and standards for medical marijuana facilities, including requiring medical marijuana facilities to obtain additional zoning approvals, such as special or conditional use permits. Common standards that should be researched and potentially implemented include standards relating to odor and ventilation; onsite usage of medical marijuana; and hours of operation. Moreover, if a city does not already generally require the submission and approval of site plans for new construction or exterior additions or alterations to commercial buildings, it would be prudent to consider implementing such a requirement. Each zoning and business license regulation and standard may vary from city to city; however, at the end of the day, the regulations and standards must not be "unduly burdensome" on the operation of the medical marijuana facility.

Finally, Amendment 2 does allow for cities to establish civil penalties for the failure of a medical marijuana facility to comply with the city's reasonable time, place and manner restrictions.

### **Policing of the Use and Possession of Medical Marijuana**

Currently, most, if not all, offenses chapters of city codes prohibit the possession of marijuana; however, due to the passage of Amendment 2, these provisions must be amended to allow for possession under certain circumstances. Though Amendment 2 makes possession and transportation of medical marijuana legal, it specifically prohibits the consumption of medical marijuana in public places and driving under the influence of marijuana. Likewise, Amendment 2 requires that qualifying patients produce on demand their identification card or equivalent identification card from another state.

### **Employment and Personnel Policies**

Amendment 2's effect on city employment policies and procedures is generally limited by the amendment's specific prohibition on persons bringing claims against employers for adverse employment actions, such as the employee either being under the influence of marijuana at work, or for attempting to work while under the influence of marijuana. While Amendment 2 generally gives cities and employers the discretion to craft personnel policies that best fit their circumstances, due to the requirements of the federal law, specifically the Drug Free Workplace Act and 18 USC § 922(g)(3) that prohibits users of federally illegal drugs from possessing firearms, and licensing requirements for persons



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operating certain types of trucks or other heavy equipment remaining a drug free workplace may still be required.

Also, due to marijuana use still being considered illegal drug use at the federal level, it is doubtful that the Americans with Disabilities Act requires cities to provide reasonable accommodations to qualifying patients.

### Potential Revenue Increases and Implications

Although Amendment 2 limits the amount of taxes that may be imposed on the sale of marijuana for medical use to only those authorized by Amendment 2, it does explicitly makes local sales and uses taxes applicable to retail sales of medical marijuana.

### Summary

Amendment 2 legalizes the cultivation, production, transportation, sale, purchase and administration of marijuana for medical purposes in part through the establishment of various medical marijuana facilities and identification cards, and by granting the Department of Health and Senior Services regulatory oversight of said facilities and identification cards. Further, certain provisions of Amendment 2 markedly affect municipalities across the state, by partially preempting municipal regulatory authority over medical marijuana; requiring revisions to municipal offense provisions related to the possession of marijuana;

potentially necessitating the redrafting of personnel policies; and increasing municipal revenues through the explicit applicability of local sales taxes on the sale of medical marijuana.

**Padraic Corcoran** is an attorney at the law firm of Williams & Campo, P.C. practicing in the areas of general municipal, land use, litigation, eminent domain, telecommunications, and real estate development/redevelopment (economic incentives) law. Williams & Campo, P.C. is a law firm based in Lee's Summit, Missouri, that was formed for the express purpose of and is devoted to the representation of municipalities and other local government entities. Contact him at (816) 524-4646 or [pcorcoran@publiclawfirm.com](mailto:pcorcoran@publiclawfirm.com)

### Did You Know?

MML has added a medical marijuana resource page to the League's One Stop Shop on [www.mocities.com](http://www.mocities.com) that includes sample ordinances, frequently asked questions, a recorded webinar on this topic, and more. Watch for the latest resources as they become available!

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## **REPORT TO PLANNING & ZONING COMMISSION**

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### **CITY OF MARYLAND HEIGHTS**

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<b>APPLICATION</b>	<b>TXT19-0001</b>
<b>CASE NAME</b>	<b>MEDICAL MARIJUANA</b>
<b>APPLICANT</b>	<b>City of Maryland Heights</b> <b>11911 Dorsett Road Maryland Heights, MO 63043</b>
<b>APPLICANT'S REQUEST</b>	<b>Amendments to the Zoning Code regarding marijuana cultivation, testing and dispensary facilities</b>
<b>PUBLIC HEARING</b>	<b>January 8, 2019</b>
<b>REPORT DATE</b>	<b>January 3, 2019</b>
<b>CASE MANAGER</b>	<b>Michael Zeek, AICP</b>
<b>RECOMMENDATION</b>	<b>CONSIDERATION OF DRAFT ORDINANCE</b>

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## REPORT TO PLANNING & ZONING COMMISSION

### CITY OF MARYLAND HEIGHTS

#### BACKGROUND

Last November, Missouri became the 32nd state to legalize medical marijuana, with voters passing an amendment to the state constitution. Medical use is limited to qualified patients. Such patients include those with cancer; epilepsy; glaucoma; intractable migraines; a chronic medical condition that causes severe persistent pain, spasms, or seizures; debilitating psychiatric disorders; HIV; any terminal illness; or other chronic medical concern when approved by a doctor.

The constitutional amendment contains four uses, licensed and regulated by the Missouri Department of Health and Senior Services, which should be examined from a zoning standpoint. Those uses include:

- **Medical Marijuana Cultivation Facility:** A facility licensed by the Department to acquire, cultivate, process, store, transport, and sell marijuana to a Medical Marijuana Dispensary Facility, Medical Marijuana Testing Facility, or to a Medical Marijuana-Infused Products Manufacturing Facility.
- **Medical Marijuana Dispensary Facility:** A facility licensed by the Department 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.
- **Medical Marijuana-Infused Products Manufacturing Facility:** A facility licensed by the Department to acquire, store, manufacture, transport, and sell marijuana-infused products to a Medical Marijuana Dispensary Facility, a Medical Marijuana Testing Facility, or another Medical Marijuana-Infused Products Manufacturing Facility.
- **Medical Marijuana Testing Facility:** A facility certified by the Department to acquire, test, certify, and transport marijuana.

In addition to defining these uses, the amendment also contains the following provision with regard to land use:

*Unless allowed by the local government, no new Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility, Medical Marijuana Dispensary Facility, or Medical Marijuana-Infused Products Manufacturing Facility shall be initially sited within 1,000 feet of a then-existing elementary or secondary school, child day-care center, or church. No local government shall prohibit Medical Marijuana Cultivation Facilities, Medical Marijuana Testing Facilities, Medical Marijuana-Infused Products Manufacturing Facilities, or Medical Marijuana Dispensary Facilities, or entities with a transportation certification either expressly or through the enactment of ordinances or regulations that make their operation unduly burdensome in the jurisdiction. However, local governments may enact ordinances or regulations not in conflict with this section, or with regulations enacted pursuant to this section, governing the time, place, and manner of operation of such facilities in the locality. A local government may establish civil penalties for violation of an ordinance or regulations governing the time, place, and manner of operation of a Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility, Medical Marijuana-Infused Products Manufacturing Facility, Medical Marijuana Dispensary Facility, or entity holding a transportation certification that may operate in such locality.*

# REPORT TO PLANNING & ZONING COMMISSION

## CITY OF MARYLAND HEIGHTS



### ANALYSIS

In light of the constitutional amendment, it is necessary to review how these uses can be regulated by the Maryland Heights Zoning Code. The Code's matrix of permitted and conditional uses in Appendix B, Land Use and Required Parking Matrix, is based on the North American Industry Classification System (NAICS). This lends some guidance as to where these new uses would fall under the existing Zoning Code:

- **Medical Marijuana Cultivation Facility:** Grown outdoors this falls under "All Other Miscellaneous Crop Farming" and grown indoors this falls under "Other Food Crops Grown Under Cover" in the NAICS. The Zoning Code does not include either of these classifications.
- **Medical Marijuana Dispensary Facility:** This falls under "All Other Miscellaneous Store Retailers" in the NAICS, which does not differentiate between medical and recreational use of marijuana. All Other Miscellaneous Store Retailers are included in the Zoning Code and require a Conditional Use Permit in the City's commercial and industrial districts.
- **Medical Marijuana-Infused Products Manufacturing Facility:** The NAICS does not have a specific classification for manufacturing of marijuana products. By interpretation, this could be considered "Medicinal and Botanical Manufacturing" which is conditional in the City's industrial districts.
- **Medical Marijuana Testing Facility:** The NAICS does not have a specific classification for testing of marijuana products. By interpretation, this could be considered "Testing Laboratories" which is permitted in the City's industrial districts and conditional in the "C-2" General Commercial District.

### REQUEST

In staff's opinion, the Zoning Code must be updated to address some of the uses related to medical marijuana. More specifically, amendments to Appendix A, Rules and Definitions, and Appendix B, Land Use and Required Parking Matrix, are warranted. Staff has prepared a draft ordinance, attached to this report, for the consideration of the Planning Commission. The following is an explanation of each amendment, with alternatives, for further consideration:

### CULTIVATION

The Zoning Code permits several agricultural uses in the "NU" Non-Urban District. These include oilseed and grain farming, nursery and tree production, agriculture related activities, and support activities for crop production. Animal production requires a Conditional Use Permit. The matrix fails to include "All Other Miscellaneous Crop Farming" which should certainly be permitted in the "NU" Non-Urban District. The draft ordinance contains this change. The matrix also fails to include provisions for crops grown indoors by hydroponics or similar means. Indoor growing would be an appropriate use for many buildings in the Westport Planning Area and would produce little, if any, adverse impacts on adjoining properties. Conceivably, a large greenhouse might be inappropriate in the "M-1" District from a visual standpoint, but the building design standards would prevent this. The draft ordinance includes "Food Crops Grown Under Cover" as a permitted use in the "NU" Non-Urban District, "M-1" Office, Service, and Light Manufacturing District, and "RDM" Redevelopment—Manufacturing District. As an alternative, this use could be established as conditional in the "M-1" and "RDM" Districts to allow review on a case-by-case basis and to establish any conditions the Commission believes are necessary.



## REPORT TO PLANNING & ZONING COMMISSION

### CITY OF MARYLAND HEIGHTS

#### ANALYSIS (CONT.)

##### **DISPENSARIES**

As previously indicated, dispensaries are classified as "All Other Miscellaneous Store Retailers." This use requires a Conditional Use Permit in the City's commercial and industrial districts due to the miscellaneous and unknown nature what could be sold. Staff's preference is to call out Medical Marijuana Dispensaries as a distinct use in the Zoning Code's definitions and land use matrix. Staff proposes the following definition:

*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 for medical purposes 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.*

This definition specifically limits this use to facilities licensed by the State of Missouri for medical purposes only. This would preclude sales of marijuana for recreational use (if ever authorized by the State) or retail sales of paraphernalia (such as head shops). If recreational use is authorized in the future, an amendment to the Zoning Code would be necessary.

Once the term is defined, the next step is to determine where the use should be permitted or conditional. Medical Marijuana Dispensaries tend to be similar in nature to health food and supplement stores. These uses are permitted in every commercial and industrial district with the exception of the "RD-MXD" Redevelopment—Mixed Use District where they are conditional. Erring on the side of caution, staff is of the opinion that the Medical Marijuana Dispensaries should also be conditional in the "C-1" Neighborhood Commercial District to fully examine any potential adverse impacts on residential properties given the "C-1" District's close proximity to homes. In conclusion, the draft ordinance would allow Medical Marijuana Dispensaries as follows:

- "C-1" Neighborhood Commercial District — Conditional Use Permit required.
- "C-2" General Commercial District — Permitted.
- "M-1" Office, Service, and Light Manufacturing District — Permitted.
- "RDC" Redevelopment—Commercial District — Permitted.
- "RDM" Redevelopment—Manufacturing District — Permitted.
- "RD-MXD" Redevelopment—Mixed Use District — Conditional Use Permit required.

##### **MANUFACTURING**

As previously discussed, the NAICS does not have a specific classification for manufacturing of medical marijuana and marijuana-infused products. By interpretation, this could be considered "Medicinal and Botanical Manufacturing." This use requires a Conditional Use Permit in the "M-1" Office, Service, and Light Manufacturing District and the "RDM" Redevelopment—Manufacturing District. The potential adverse impacts of manufacturing marijuana products, particularly odors, would be similar to other products in this classification. Therefore, staff believes it is the appropriate classification to regulate Medical Marijuana-Infused Products Manufacturing. An alternative would be to create a new use called "Medical Marijuana-Infused Products Manufacturing" if the Commission wishes to regulate it in a different fashion.

##### **TESTING**

The NAICS does not have a specific classification for testing of marijuana products. By interpretation, this could be considered "Testing Laboratories" which is permitted in the City's industrial districts and conditional in the "C-2" General Commercial District. Do to its limited scope, staff does not

# REPORT TO PLANNING & ZONING COMMISSION

## CITY OF MARYLAND HEIGHTS



### ANALYSIS (CONT.)

recommend that "Medical Marijuana Testing Facility" be included as a distinct use in the Zoning Code, instead regulating the use under the current "Testing Laboratories" classification. An alternative would be to establish "Medical Marijuana Testing Facility" to more specifically regulate it. This would be necessary if the Commission seeks to make the use conditional in the City's industrial districts.

### **DISTANCE REQUIREMENT**

The constitutional amendment contains the following language:

*Unless allowed by the local government, no new Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility, Medical Marijuana Dispensary Facility, or Medical Marijuana-Infused Products Manufacturing Facility shall be initially sited within 1,000 feet of a then-existing elementary or secondary school, child day-care center, or church.*

This provision establishes an arbitrary distance requirement from schools, child care centers, and churches but allows local governments to opt-out. From a zoning standpoint, only Sexually Oriented Businesses are subject to a distance requirement in the City of Maryland. Liquor licenses impose a distance requirement, but establishments that serve liquor do not have a Zoning Code imposed distance requirement. Staff does not recommend that the City enforce this distance requirement for medical marijuana uses. If recreational use is ever authorized, such distance requirement should be considered. Alternatives would be to enforce the distance requirement or to require a Conditional Use Permit for dispensaries within 1,000 feet of an existing elementary or secondary school, child day-care center, or church.



## **REPORT TO PLANNING & ZONING COMMISSION**

### **CITY OF MARYLAND HEIGHTS**

#### **FINDINGS AND RECOMMENDATION**

##### **NECESSITY**

1. The City Planner finds that it is necessary to amend the Zoning Code with regard to medical marijuana related uses.

##### **CONSISTENT WITH COMPREHENSIVE PLAN**

2. Subject to further review and comment from the Planning Commission, the City Planner finds that the proposed amendments are consistent with the Comprehensive Plan as they act to implement the goals, objectives, and policies of the Plan.

##### **CONSISTENT WITH STATE STATUTES**

3. The City Planner finds that the revised regulations are consistent with Missouri Revised Statutes related to medical marijuana related uses.

##### **CLARITY**

4. The City Planner finds that the proposed amendments will clarify the regulations regarding medical marijuana related uses.

##### **RECOMMENDATION**

The City Planner requests Planning Commission consideration of the attached draft ordinance to amend the Zoning Code for medical marijuana related uses. Specifically, the ordinance would amend Appendix A, Rules and Definitions, and Appendix B, Land Use and Required Parking Matrix. This report shall be used as a basis for future interpretations of the Zoning Code with regard to medical marijuana uses.

  
Michael Zeek  
City Planner



8-7

F-7

Recommendation of Planning Commission

BILL NO.

ORDINANCE NO. 2019-DRAFT

AN ORDINANCE AMENDING CHAPTER 25, ZONING, OF THE MUNICIPAL CODE WITH  
REGARD TO MEDICAL MARIJUANA RELATED USES  
(Petition of City of Maryland Heights)

**WHEREAS**, medical marijuana uses are licensed and regulated by the State of Missouri; and

**WHEREAS**, a public hearing was held before the Planning Commission to consider the proposed amendments to the Zoning Code; and

**WHEREAS**, the Planning Commission has recommended approval of the proposed amendments; and

**WHEREAS**, the City Council has reviewed the recommendation of the Planning Commission and has determined that the proposed amendments are appropriate.

**NOW THEREFORE**, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARYLAND HEIGHTS, MISSOURI, AS FOLLOWS:

**Section 1:** Appendix A, Rules and Definitions, of Chapter 25, Zoning, of the Maryland Heights Municipal Code is hereby amended to include the following new definition:

**Medical Marijuana Dispensary:** 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 for medical purposes 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.

**Section 2:** Appendix B, Land Use and Required Parking Matrix, of Chapter 25, Zoning, of the Maryland Heights Municipal Code is hereby amended as set forth and fully described in "Table A" below:

TABLE A

Code	Land Use	NU	C-1	C-2	M-1	RDM	RDC	RD-MXD	Minimum Parking
111419	Food Crops Grown Undercover	P			P	P			None in the "NU" Non-Urban District, 1 space for each employee on the max. shift in other districts
111998	All Other Miscellaneous Crop Farming	P							NONE
446192	Medical Marijuana Dispensaries		C	P	P	P	P	C	4.5 spaces per 1,000 sf of floor area devoted to retail use

**Section 3:** This Ordinance shall be in full force and effect from and after its passage and approval.

PASSED BY THE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2019.

\_\_\_\_\_  
MAYOR/PRESIDING OFFICER

APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2019.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

Thank you for purchasing the recorded webinar "Medical Marijuana: Implications for Municipalities" panelist include Padraic Corcoran, Chris White and John Payne. Use the link below to start the webinar.

If you have questions and it is between the hours of 8:00am-5:00pm, please contact [Emily Koenigsfeld](#) at 573-635-9134. Thanks and enjoy!!



[Begin Webinar](#) (click here)





# Medical Marijuana

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WILLIAMS &  
CAMPO, P.C.

Presented February 21, 2019 by Padraic W. Corcoran

Missouri Municipal League

Medical Marijuana: Implications for Municipalities  
PROVIDING LEGAL SOLUTIONS FOR LOCAL GOVERNMENTS

## **Today's Roadmap**

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- General Overview of Amendment 2
- Medical Marijuana Facilities
- Medical Marijuana Identification Cards
- Matters of local concern

## **Amendment 2 – General Overview**

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- Purpose - allow for the cultivation, production, transportation, and administration of marijuana to qualifying patients
- Designates the Department of Health and Senior Services as the regulatory, oversight body.

## **Amendment 2 – Timelines**

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- June 4, 2019 – Application forms and instructions for medical marijuana facilities, qualifying patients, and caregivers will be available.
- July 4, 2019 – Applications for identification cards for qualifying patients and caregivers will begin to be accepted.
- Aug. 3, 2019 – Facility applications will begin to be accepted.
- Aug. 4, 2019 – Deadline for approval of applications for identification cards accepted on July 4, 2019
- December 31, 2019 – Deadline for approval of facility applications accepted on August 3, 2019.

## **Medical Marijuana Facilities**

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- Medical Marijuana Cultivation Facilities
- Medical Marijuana Infused Products Facilities
- Medical Marijuana Dispensary Facilities
- Medical Marijuana Testing Facilities

## Cultivation Facility

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- Facility licensed to “acquire, cultivate, process, store, transport, and sell marijuana” to other medical marijuana facilities. Art. XIV, section 1.2(7).
- 3 Types – Art. XIV, section 1.3(8).
  - Indoor facility - maximum of thirty thousand square feet of flowering plant canopy space
  - Outdoor facility – maximum of two thousand eight hundred flowering plants
  - Greenhouse facility – may choose to be limited by either of the above maximums
- 1 per 100,000 inhabitants minimum. Art. XIV, section 1.3(15).
- Maximum of three licenses per entity. Art. XIV, section 1.3(8).



## Dispensary Facility

- Facility licensed to “acquire, store, sell, transport, and deliver marijuana, marijuana-infused products, and drug paraphernalia used to administer marijuana.” Art. XIV, section 1.2(8).
- 24 Dispensaries per United States congressional districts minimum. Art. XIV, section 1.3(17).
- Maximum of five licenses per entity. Art. XIV, section 1.3(9).





## Infused Products Facility

- Facility licensed to “acquire, store, manufacture, transport, and sell marijuana-infused products to a medical marijuana dispensary facility, a medical marijuana testing facility, or to another medical marijuana-infused products manufacturing facility.” Art. XIV, section 1.2(7).
- 1 license per 70,000 inhabitants minimum. Art. XIV, section 1.3(16).
- Maximum of three licenses per entity. Art. XIV, section 1.3(16)



## Testing Facility

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- Facility certified by DHSS to “acquire, test, certify, and transport marijuana.” Art. XIV, section 1.2(10).
- May not be owned by an entity that owns another type of medical marijuana facility. Art. XIV, section 1.3(4).

## **Medical Marijuana Identification Cards**

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- Qualifying Patient Identification Card
- Qualifying Patient Cultivation Identification Card
- Primary Caregiver Identification Card

## **Qualifying Patient Identification Card**

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- Card issued to persons having a qualifying condition
- Qualifying conditions include:
  - cancer,
  - epilepsy,
  - glaucoma,
  - chronic medical conditions that cause severe,
  - persistent pain,
  - and chronic medical conditions normally treated with prescription medication that could lead to dependence
  - Art. XIV, Section 1.2(15)
- Requires certification by a physician

## Qualifying Patient Cultivation Identification Card

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- Card for “a qualifying patient or his or her primary caregiver may obtain an identification card from the department to cultivate up to six flowering marijuana plants for the exclusive use of that qualifying patient.” Art. XIV, section 1.3(12).
- Qualifying patients cultivating marijuana for medical use may possess up to a ninety-day supply, so long as the supply remains on property under their control. Art. XIV, section 1.3(14).
- Cultivation must be in an enclosed, locked facility equipped with security devices. Art. XIV, section 1.7(9).

## **Primary Caregiver Identification Card**

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- Card for “individual twenty-one years of age or older who has significant responsibility for managing the well-being of a qualifying patient and who is designated as such on the primary caregiver's application for an identification card under this section or in other written notification to the department.” Art. XIV, section 1.2(14).
- A primary caregiver may possess a separate legal limit for each qualifying patient under their care and a separate legal limit for themselves if they are a qualifying patient. Art. XIV, section 1.3(14)
- May not have more than 3 qualifying patients under their supervision. Art. XIV, section 1.7(6).

## **Issues of Municipal Concern**

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- Regulation of Medical Marijuana Facilities
- Employment
- Policing and revisions to Offense provisions
- Revenue



## **Regulation – Basics**

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- Cities may not expressly prohibit or effectively prohibit medical marijuana facilities. Art. XIV, section 1.7(11)
- Cities may regulate the “time, place, and manner” of the operation of medical marijuana facilities as long as the regulations are not “unduly burdensome on the operation” of the facility. Art. XIV, section 1.7(11)

## **Regulations – Spacing and Zoning**

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- “Unless allowed by the city, medical marijuana facilities may not be originally located within 1,000 feet of a primary or secondary school, day care facility, or church.” Art XIV, section 1.7(11)
- Zoning Classification
  - By Right in certain zoning districts?
  - Special Use Permit?
  - Overlay Zone?

## Amendment 2 – Employment Issues

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- **Amendment 2**

- Prohibits a person from bringing a claim against an employer due to an adverse employment action because the person worked or attempted to work under the influence of marijuana. Art. XIV, section 1.7(1)(d).

- **ADA Applicability**

- Since the use of marijuana is still considered illegal drug use at the federal level, ADA most likely does not protect medical marijuana. *James v. City of Costa Mesa*, 700 F.3d 394 (9th Cir. 2012)

- **Personal Policy**

- Continue as a Drug Free Workplace?
- Specific carve out for certain positions?

## **Amendment 2 – Changes to Policing and Offenses Chapters**

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- Possession of Marijuana
  - Required to show identification card or equivalent card from another state. Art. XIV, section 1.5(1).
  - DHSS may limit the amount of marijuana that may be possessed. Art. XIV, section 1.3(13) & (14).
- Smoking in public places prohibited. Art. XIV, section 1.1 and Art. XIV, section 1.7(7)
- Driving under the influence expressly prohibited. Art. XIV, section 1.1.

## **Amendment 2 – Effects of Municipal Revenue**

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- Additional, state 4% sales tax. Art. XIV, section 1.4(1).
- Local sales tax still applicable. Art. XIV, section 1.4(4).
- Prohibits additional taxes on the **sale** of marijuana. Art. XIV, section 1.4(5).
- Utilities

**WILLIAMS &  
CAMPO, P.C.**

## **Medical Marijuana**

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**PROVIDING LEGAL SOLUTIONS FOR LOCAL GOVERNMENTS**

A stylized, dark gray leaf graphic with three main lobes, positioned behind the title box.

# **MOCANNTRADE** **PRESENTS**

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CITY AND MUNICIPALITY PRIMER AFTER PASSAGE OF  
AMENDMENT 2 – MEDICAL MARIJUANA



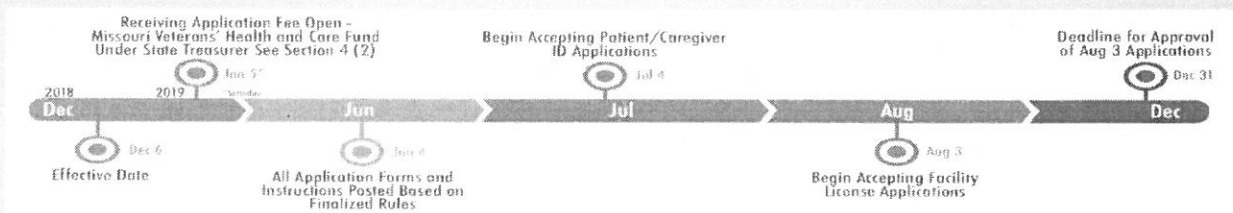
## AMENDMENT 2: MEDICAL MARIJUANA OVERVIEW & MOST IMPORTANT TAKEAWAYS

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- MEDICAL MARIJUANA (MMJ) IS LEGAL IN MISSOURI AS **OF DECEMBER 5, 2018.**
- TIMELINE
- PATIENT ACCESS, PATIENT ACCESS, PATIENT ACCESS!
- HOW WILL MMJ CARDS BE ISSUED?
- MARIJUANA & GUNS
- WHY THIS MATTERS TO YOUR CITY:  
Economic Impact, Taxes, Jobs, etc.
- MISCELLANEOUS ISSUES & QUESTIONS



## DEPARTMENT OF HEALTH AND SENIOR SERVICES ROLLOUT: TIMELINE CHART



## DEPARTMENT OF HEALTH AND SENIOR SERVICES

- THE DEPARTMENT OF HEALTH AND SENIOR SERVICES (DHSS) OVERSEES & REGULATES MMJ FACILITIES IN MISSOURI
- THE DIRECTOR OF THE DHSS AND THE HEAD OF THE DHSS MMJ DIVISION BOTH STRESS ONE THING ABOVE ALL ELSE (AFTER SAFETY): **PATIENT ACCESS**



## WHAT DOES “PATIENT ACCESS” MEAN?

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- AMENDMENT 2 CALLS FOR A MINIMUM OF 24 DISPENSARIES IN EACH OF THE 8 CONGRESSIONAL DISTRICTS, TOTALING AT LEAST 192 ACROSS THE STATE OR ROUGHLY ONE DISPENSARY PER 32,000 RESIDENTS
- DISPENSARIES MUST BE SPREAD THROUGHOUT THE STATE



## PATIENT ACCESS CONTINUED . . .

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- ACCORDING TO THE DHSS, DISPENSARIES **ARE MEDICAL ESTABLISHMENTS**
- DISPENSARIES AND WELL-KNOWN PHARMACY CHAINS (CVS, WALGREENS, ETC.) SHOULD BE TREATED THE SAME
- ANY SPECIAL SETBACKS OR ZONING ORDINANCES WILL RESULT IN "DEATH BY 1,000 CUTS"
- **THIS WILL BE THE MOST COMMON MMJ FACILITY IN ALMOST EVERY CITY**



## MEDICAL MARIJUANA CARDS

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- MMJ CARDS MAY ONLY BE ISSUED BY A MISSOURI LICENSED M.D. OR D.O.
- SOME CLINICS ARE ALREADY POPPING UP, I.E., THE GREEN CLINICS IN KCMO
- THE CONSULTING DOCTOR WILL REVIEW PATIENTS RECORDS AND CONDUCT AN EXAM, AFTER WHICH THEY WILL PROVIDE A WRITTEN "CERTIFICATION" OR SUBMIT AN E-CERTIFICATION TO THE DHSS.
- DHSS MUST PROVIDE A CARD TO CERTIFIED PATIENTS WITHIN 30 DAYS





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## MEDICAL MARIJUANA CARDS CONT ...

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- DHSS CERTIFICATION CARD WILL CONTAIN A NUMBER OF YET TO BE DISCLOSED SECURITY/ANTI-FRAUD PROTECTIONS
- DISPENSARIES WILL SCAN ALL CARDS PRIOR TO ALLOWING PATIENT INTO MAIN ROOM OF DISPENSARY.
- QR CODE EMBLEM OR SIMILAR SECURITY DEVICE WILL TELL DISPENSARY UP TO THE SECOND HOW MUCH PRODUCT THE PATIENT HAS LEFT TO PURCHASE FOR THE 30-DAY PERIOD, BEFORE PATIENT CAN EVEN ENTER THE DISPENSARY FLOOR



## MEDICAL MARIJUANA CARDS CONT ...

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- LEGISLATION IS BEING INTRODUCED TO PROVIDE SEVERE PENALTIES TO ANY PERSON ANYONE WHO ACCESSES THE PATIENT DATABASE WITHOUT A VALID REASON. ONLY ESSENTIAL DHSS PERSONNEL WILL HAVE ACCESS TO MMJ PATIENT DATABASE



## MEDICAL MARIJUANA CARDS CONT ...

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- DISPENSARIES MAY OFFER  
DISCOUNTS TO MEDICAID AND  
VETERAN CUSTOMERS – PATIENT  
ACCESS ISSUE



## GUNS & MARIJUANA

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- Can you purchase guns legally from a FFL dealer if you obtain a MMJ certification card?
- First, *always seek legal advice from your own attorney to get the best advice for your situation*. However, as a general rule, the DOJ-ATF issued an open letter in 2011 stating 18 U.S.C. § 922(g)(3) prohibits “an unlawful user . . . of [marijuana] from . . . possessing firearms or ammunition” regardless of state marijuana law.



## GUNS & MARIJUANA CONTINUED . . .

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- So, the general answer is **NO**. Schedule I drugs, i.e. marijuana and firearms do not mix. This does not mean LEO will be searching your home to confiscate weapons. Furthermore, a bill is likely to be signed by the Governor creating strict penalties to anyone discloses the MMJ patient database to a federal agency, absent court order.
- Again, talk to your own lawyer to discuss your specific circumstance, but as a general rule, don't carry while in possession of MMJ – even a legal amount under state law. This COULD lead to federal charges.



## WHY THIS ALL MATTERS TO YOUR CITY

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- MOCANN HOPES TO HAVE BETWEEN 160,000 – 200,000 MMJ CARD CARRIERS BY 3 QUARTER 2020.
- IN JUST MEETING THE 2% FIGURE, THIS SHOULD BRING OVER 9,000 JOBS TO MISSOURI, INCLUDING SOME VERY HIGH SKILL JOBS IN GROW/CULTIVATION AND EXTRACTION FACILITIES.





# QUESTIONS?

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