



LEE'S SUMMIT
MISSOURI
Development Services Department

Application Information

Appl. #PL2019-194 – Unified Development Ordinance (UDO) Amendment #8 -Medical Marijuana affecting the following ordinance sections - Article 6 Use Standards - Division I General Provisions and Division II Uses Permitted with Conditions; Article 8 Site Standards - Division I Design Standards- Subdivision 6 Crime Prevention Through Environmental Design; Article 15 Rules of Interpretation and Definitions- Division II Definitions; City of Lee's Summit, applicant

Overview of Amendment

The amendment addresses the zoning aspects of medical marijuana.

Background and Explanation

On November 6, 2018, the voters of the State of Missouri approved Amendment 2 legalizing medical marijuana in the State. The new constitutional provisions took effect on December 6, 2018. These provisions impact multiple departments and activities of the City, including: zoning, building codes, law enforcement/prosecution, and business license. The law provides that the State Department of Health has 240 days from the effective date of the provision to establish rules and begin accepting applications for the various types of business activities related to the legalization provisions. The Council approved, on November 20, 2018, a resolution for an administrative delay, to allow the City to integrate any rules the State would promulgate related to medical marijuana into our own code. State regulations meant to augment Amendment 2 were finalized on June 3, 2019.

On June 12, 2019, a draft UDO amendment was presented to the Community and Economic Development Committee (CEDC). After a staff presentation and public testimony, the CEDC voted unanimously to send the ordinance to the Planning Commission.

Staff crafted the UDO amendments with the presumption of City Council wanting the tightest regulations allowed by state statute. Amendment 2 is unusual in that constitutional language is typically brief and regulations are promulgated to create the desired result. By contrast, Amendment 2 is lengthy and reads like a set of regulations. The State, as of June 3, 2019, finalized a set of detailed regulations meant to augment Amendment 2. This level of State involvement is important when the City considers our own rules, as we cannot prohibit what the Constitution or state regulation allows, nor can we allow what the Constitution or state regulation prohibits. Amendment 2 also states that Cities are not allowed to create regulation that is "Unduly Burdensome". Unduly burdensome is difficult to define. However, regulations that would make it impossible for medical marijuana to exist in the city would likely cross this threshold. The City can fill in any items missing from state regulations and dictate time, place and manner for medical marijuana uses. For instance, the proposed UDO amendment states that medical marijuana uses shall be closed to the public between the hours of 10pm to 6am.

Amendment 2 creates the definitions of four separate medical marijuana uses: dispensary, infused product manufacturing, cultivation and testing. The amendment also requires buffers to a set of sensitive land uses as follows: daycares, elementary schools, secondary schools and churches. The definitions of these sensitive land uses will become important when medical marijuana uses are proposed throughout the city, so staff has referenced the State's definitions for consistency. Staff has also clarified definitions with possible associations with medical marijuana that are not to be considered when looking for locations. These include definitions for hospital and laboratory.

The ordinance is also structured so medical marijuana uses are conditional; meaning that when certain conditions are met the use is allowed. This means medical marijuana uses proposed in existing buildings would not have public hearings or notice. Due to the structure of the City’s UDO, new buildings with medical marijuana uses will require a preliminary development plan (PDP) and the normal two-hearing public process before both the Planning Commission and City Council. There are two reasons for this approach. First, PDPs are legislative in nature. If challenged in court, a legislative action is an open record and more facts and testimony can be introduced. Courts tend to favor a City’s decision if it is made on facts that are “Fairly Debatable”. The other approach to medical marijuana uses might be a Special Use Permit (SUP). SUP applications are quasi-judicial in nature and are closed records. Staff believes the PDP process is a safer avenue in light of the controversial nature of medical marijuana facilities. Secondly, the conditional use process was chosen to avoid conflict with State regulations. The key situation to think of is an existing tenant space in a building. No other uses allowed by the zone require a PDP when a change of tenancy occurs. Requiring a public process for medical marijuana uses where similar uses do not may be seen as unduly burdensome.

The constitutional amendment calls for buffering from certain land uses as follows: daycares, elementary schools, secondary schools and churches. The maximum buffer allowed by the State is 1,000 feet, but may be reduced by Cities. The proposed amendment is to keep the 1,000’ buffer using all of the measurement guidelines as prescribed by the State, which requires a licensed survey to verify distances. The State language requires, “(m)easurements shall be made along the shortest path between the demarcation points that can lawfully be traveled by foot.” The points of demarcation are shown in the table below:

Medical Marijuana “Points of Demarcation” Under State Regulations

	MM Freestanding	MM Multi-Tenant
Day Care Freestanding	MM – External Wall Day Care – Property Line	MM – Door Day Care – Property Line
Day Care Multi-Tenant	MM – External Wall Day Care – Door	MM – Door Day Care – Door

The attachments to your packet include Staff’s presentation to CEDC. This report includes UDO changes. The proposed zoning regulations would impose buffer requirements at the maximum limits allowed by the Missouri Constitution, and in a manner that is consistent with State regulations which have been adopted on the same subject.

Planning Commission Hearing

At the June 27, 2019 Planning Commission meeting, staff presented a draft UDO ordinance regulating Medical Marijuana. Staff’s presentation outlined the legal framework created by the constitutional amendment and recently adopted state regulations. The presentation noted the need for an additional use of a Transportation Facility not covered in the constitutional amendment. Additional state rules noted the need for a Transportation Facility and require it to meet the same buffers as other medical marijuana uses. The ordinance has been updated to reflect this change.

Lee’s Summit Cares submitted written testimony cataloging the hours of operation of local pharmacies with a recommendation based that medical marijuana facilities be open during similar times. Staff agreed with this assessment and advised the Commission to adopt the suggested hours of operation.

After asking clarifying questions and hearing public testimony, the Commission voted unanimously to recommend approval of the UDO amendment with the addition of specific hours of operation as stated in the June 25, 2019 written testimony from Lee’s Summit Cares. The following ordinance as presented reflects these changes.

Proposed UDO Amendment

Revisions to the UDO are shown in the underline and ~~strikethrough~~ format.

ARTICLE 6. – USE STANDARDS

DIVISION I – GENERAL PROVISIONS

Sec. 6.020. - Permitted, conditional and special use tables.

- A. Uses that are permitted by right or permitted by right but with conditions and uses permitted as special uses are shown in Table 6-1.
- B. In a PMIX District, permitted uses are specified as part of the zoning approval for each development.
- C. Any use not shown as a permitted, conditional or special use in a zoning district is specifically prohibited in that district.
- D. Uses that are allowed in the PMIX District pursuant to Table 6-1 may be modified by the Governing Body when it is determined that a better overall plan can be achieved.

Table 6-1
List of Permitted, Conditional and Special Uses

Use is permitted by right: P

Use is permitted by right but with conditions: C

Use may be permitted as a special use: S

Per approved plan: *

Use is not permitted:

	A G	RDR	RLL	R- 1	RP- 1	RP- 2	RP- 3	RP- 4	PRO	NFO	TNZ	PO	CP- 1	CP- 2	CBD	CS	PI	AZ	PMIX
PRINCIPAL USES																			
<u>Medical Marijuana</u>																			
<u>Dispensary</u>														<u>C</u>		<u>C</u>	<u>C</u>		<u>C</u>
<u>Cultivation Facility</u>	<u>C</u>																<u>C</u>		
<u>Testing Facility</u>	-															-	<u>C</u>		
<u>Extraction Facility</u>																	<u>C</u>		
<u>Transportation Facility</u>																	<u>C</u>		

ARTICLE 6. – USE STANDARDS

DIVISION II – USES PERMITTED WITH CONDITIONS

Section 6.395. – Medical Marijuana Facilities.

- A. This section covers the following uses: Medical Marijuana Facilities, Medical Marijuana Dispensary, Medical Marijuana Cultivation Facility, Medical Marijuana-infused Products Manufacturing Facility, Medical Marijuana Testing Facility and Medical Marijuana Transportation Facility.
- B. Definitions. As used in this Section only, and notwithstanding definitions of the same or related words or terms in Article 15 of this UDO, the following words and terms shall have the following meanings:
 1. “Church” shall have the meaning set forth in Title 19, Division 30, Chapter 95, Section 95.010 of the Code of State Regulations (19 CSR 30-95.010), and as such definition may be amended from time to time in such state regulation.
 2. “Child day-care center” shall have the meaning as defined for the term “daycare” as set forth in Title 19, Division 30, Chapter 95, Section 95.010 of the Code of State Regulations (19 CSR 30-95.010), and as such definition may be amended from time to time in such state regulation.
 3. “Elementary or secondary school” shall have the meaning set forth in Title 19, Division 30, Chapter 95, Section 95.010 of the Code of State Regulations (19 CSR 30-95.010), and as such definition may be amended from time to time in such regulation.
- C. General Standards. All medical marijuana facilities shall comply with the following regulations, in addition to all other regulations imposed upon such facilities by federal, state or local law:
 1. A business license shall be obtained annually, and the medical marijuana license issued by the State of Missouri shall be displayed in an open and conspicuous place on the premises.
 2. Medical marijuana facilities must develop, implement, and maintain an odor control plan, which shall address odor mitigation practices including, but not limited to, engineering controls, such as system design and operational processes, which shall be reviewed and certified by a professional engineer or a certified industrial hygienist as sufficient to effectively mitigate odors for all odor sources. No use shall emit an odor that violates the provisions of Chapter 16, Section 302.1.2 Commercial Odor.
 3. No medical marijuana facilities shall be located in a building that contains a residence, and no residences may be established or maintained in a medical marijuana facility.
 4. All medical marijuana facilities may be open to the public between the hours of 9:00 A.M. to 8:00 P.M. Monday through Friday, 9:00 A.M. to 6:00 P.M., Saturday and 10:00 A.M. to 6 P.M. Sunday ; no persons not employed by the business shall be on the premises, and no sales or distribution of marijuana shall occur upon the premises outside of these times.
 5. No marijuana may be smoked, ingested, or otherwise consumed on the premises of a medical marijuana facility.
 6. All operations and all storage of materials, products, or equipment shall be within a fully enclosed building. No outdoor operations or storage shall be permitted.
 7. If multiple licenses for medical marijuana facilities are issued for one lot, tract or parcel of property, then restrictions for the highest intensity use shall apply. The highest intensity use shall mean the use that has the most restrictive regulations.

8. Buffer. No medical marijuana facility shall be sited, at the time of application for license or for local zoning approval, whichever is earlier, within one thousand (1,000) feet of any then-existing elementary or secondary school, child day-care center, or church. The method of measuring such distance between a medical marijuana facility and an elementary or secondary school, child day-care center, or church shall be as set forth in Title 19, Division 30, Chapter 95, Section 95.040 of the Code of State Regulations (19 CSR 30-95.040), and as such state regulations may be amended from time to time. The distance between a medical marijuana facility and an elementary or secondary school, child day-care center, or church shall not be less than the distance required by such state regulations.
9. All other City Codes requirements that are not inconsistent with the medical marijuana facility regulations of the UDO shall apply to all medical marijuana facilities.
10. All medical marijuana facilities shall be constructed and operated in compliance with the rules and regulations issued by the State of Missouri Department of Health and Senior Services.

Sec. 8.340. - CPTED uses specified.

The following uses have been classified as "Uses with Conditions" per Division 2 of Article 6 of this chapter, having been determined with a tendency toward an increased risk of crime. Specific conditions for such uses are found in Division 2 of Article 6 and shall be required to be met prior to receiving any zoning approval, business license or approval to occupy any commercial space:

- A. Bank/financial services;
- B. Bank drive-thru facility;
- C. Check cashing and payday loan business;
- D. Convenience store (C-Store);
- E. Financial services with drive-up window or drive-thru facility;
- F. Pawn shop;
- G. Title loan business, if performing on site cash transactions with \$500.00 or more in cash on hand;
- H. Unattended self-serve gas pumps;
- I. Unsecured loan business;
- J. Medical Marijuana Dispensary;
- K. Medical Marijuana Cultivation Facility;
- L. Medical Marijuana-infused Products Manufacturing Facility;
- M. Medical Marijuana Testing Facility;
- N. Medical Marijuana Transportation Facility
- O. Other similar uses shall meet the same standards as the above.

ARTICLE 15. – RULES OF INTERPRETATION AND DEFINITIONS

DIVISION II – DEFINITIONS

[Note: The following definitions are amended or added, as noted. All other definitions in Article 15, Division II which do appear below remain as codified and are unaffected by this amendment.]

Sec. 15.150. - Agricultural operation.

Agricultural operation shall mean use of land where such land is devoted to the production of plants, animals or horticultural products, including forests and forest products; harvest and management; dairy farming; grazing and pasturage; truck gardening; bee keeping; the raising of crops, fruit and nursery stock; fish farms; fur bearing animal farms; and the harvesting, processing, packaging, packing, shipping, marketing and selling of products produced on the premises; incidental farm occupations; and such uses as machinery, farm equipment, and domestic repair and construction. Agricultural operation shall not include commercial feed lots, slaughter houses, medical marijuana facilities or the removal of trees for the purpose of development or redevelopment or the removal of trees without replanting.

Sec. 15.1100. - Drive-up establishment.

Drive-up establishment shall mean a place of business that encourages customers to receive services or obtain goods, usually through a window or automated device, while remaining in their motor vehicle such as dry cleaners, banks, pharmacies grocery stores, etc. This definition does not apply to restaurants or package liquor establishments. Drive-up establishment shall not include medical marijuana facilities.

Sec. 15.1851. – Marijuana.

Marijuana shall have the meaning assigned to such term in Article 14, Section 1 of the Missouri Constitution, which is 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” do not include industrial hemp containing a cropwide 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.

Sec. 15.1852. – Marijuana-infused Products.

Marijuana-Infused Products shall have the meaning assigned to such term in Article 14, Section 1 of the Missouri Constitution, which is 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.

Sec. 15.1853. – Marijuana-infused Products Manufacturing Facility.

Marijuana-Infused Products Manufacturing Facility shall have the meaning assigned to such term in Article 14, Section 1 of the Missouri Constitution, which is a facility licensed by the state 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.

Sec. 15.1854. – Medical Marijuana.

Medical Marijuana means marijuana allowed for the limited legal production, distribution, sale and purchase for medical use as governed by Article 14, Section 1 of the Missouri State Constitution.

Sec. 15.1855. – Medical Marijuana Facility.

Medical Marijuana Facility shall mean a medical marijuana cultivation facility, medical marijuana dispensary facility, medical marijuana-infused products manufacturing facility, medical marijuana testing facility, medical marijuana transportation facility, and any facility that contains one of these uses.

Sec. 15.1856. – Medical Marijuana Cultivation Facility.

Medical Marijuana Cultivation Facility shall have the meaning assigned to such term in Article 14, Section 1 of the Missouri Constitution, which is 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.

Sec. 15.1857. – Medical Marijuana Dispensary Facility.

Medical Marijuana Dispensary Facility shall have the meaning assigned to such term in Article 14, Section 1 of the Missouri Constitution, which is 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.

Sec. 15.1858. – Medical Marijuana Testing Facility.

Medical Marijuana Testing Facility shall have the meaning assigned to such term in Article 14, Section 1 of the Missouri Constitution, which is a facility certified by the department [of health and senior services] to acquire, test, certify, and transport marijuana.

Sec. 15-1859. – Medical Marijuana Transportation Facility

Medical Marijuana Testing Facility shall have the meaning assigned to such term in as set forth in Title 19, Division 30, Chapter 95, Section 95.010 of the Code of State Regulations (19 CSR 30-95.010), which is a facility certified by the department to transport marijuana to a qualifying patient, , a primary caregiver, a marijuana-infused products manufacturing facility, medical marijuana cultivation facility, medical marijuana dispensary facility or medical marijuana testing facility, or another medical marijuana transportation facility.

Sec. 15.2030. - Office.

Office shall mean the use of any building or premises primarily for conducting the affairs of a business, profession, service, industry, or government, and generally furnished with desks, tables, files, and communication equipment.

- A. Building contractor or construction firm office . An office primarily engaged in the provision of services relating to a building contractor or construction firm business.
- B. Business office, general . An office used primarily for the administrative or legal affairs of a company.
- C. Medical or dental office . An office occupied and maintained for the provision of services by a person licensed by the State of Missouri to practice in the healing arts for humans, such as a physician, surgeon, dentist, or optometrist. A medical office shall not include medical marijuana facilities.

- D. Professional office. An office occupied by a member of a recognized profession and maintained for the provision of professional services, such as but not limited to, a lawyer, architect, city planner, landscape architect, interior designer, accountant, financial planner, auditor, bookkeeper, real estate, brokerage for securities or commodities, secretarial services, or engineer.

Sec. 15.2490. - Research services.

Research services shall mean establishments primarily engaged in research of an industrial or scientific nature but excludes final product testing. Typical uses include electronics research laboratories, space research and development firms, medical laboratories, or pharmaceutical research labs. Research services shall not include medical marijuana facilities.

Sec. 15.1520. - Hospital.

Hospital shall mean an institution providing primary health service and medical and surgical care to persons suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions. This shall include, as an integral part of the institution, related facilities such as laboratories, outpatient facilities or training facilities. Hospital shall not include medical marijuana facilities.

Sec. 15.1610. - Laboratory.

Laboratory shall mean a building, or portion thereof, in which scientific, medical or dental research, investigation, testing or experimentation is conducted. Laboratory shall not include medical marijuana facilities.

Recommendation
Staff recommends APPROVAL of the UDO amendment as presented.