



The City of Lee's Summit

Final Agenda

Community and Economic Development Committee

Wednesday, August 14, 2019

4:00 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Approval of Action Letter
 - A. [2019-2959](#) Approval of the July 10, 2019 Community and Economic Development Committee Action Letter.
5. Public Comments
6. Business
 - A. [TMP-1329](#) An Ordinance amending Chapter 17, Offenses, Article VIII of the Code of Ordinances for the City of Lee's Summit, Missouri, to update provisions regarding Controlled Substances and Comply with Article XIV of the Missouri Constitution.

Presenter: Dan White, Chief Counsel of Management and Operations
 - B. [TMP-1330](#) An Ordinance amending Chapter 1, General Provisions, Section 1-13 of the Code of Ordinances for the City of Lee's Summit, Missouri, to update penalty provisions in accordance with Missouri law.

Presenter: Dan White, Chief Counsel of Management and Operations
7. Roundtable
8. Adjournment

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Packet Information

File #: 2019-2959, **Version:** 1

Approval of the July 10, 2019 Community and Economic Development Committee Action Letter.



The City of Lee's Summit
Action Letter - Draft
Community and Economic Development Committee

Wednesday, July 10, 2019

4:00 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

1. Call to Order

2. Roll Call

Present: 3 - Chairperson Diane Forte
Vice Chair Fred DeMoro
Committee Member Beto Lopez
Planning Commissioner Funk

Absent: 2 - Committee Member Craig Faith

3. Approval of Agenda

A motion was made by Vice Chair DeMoro, seconded by Committee Member Lopez, to approve the agenda. The motion carried unanimously.

4. Public Comments

There were no public comments.

5. Business

- A. [2019-2879](#) Approval of the June 12, 2019 Community and Economic Development Committee minutes

A motion was made by Committee Member Lopez, seconded by Vice Chair DeMoro to approve the June 12, 2019 Action Letter. The motion carried unanimously.

- B. [BILL NO. 19-166](#) An Ordinance Amending Chapter 28. Taxation, Article II of the Code of Ordinances for the City of Lee's Summit, Missouri, By Creating Division 8 - Medical Marijuana Facilities; City of Lee's Summit, Applicant. (CEDC 7-10-19)

David Bushek, Chief Counsel of Econ. Dev. & Planning, presented information regarding the five types of medical marijuana facilities. He prefaced the presentation by acknowledging this is a state constitutional amendment and the city is required to accommodate these uses through zoning, business licensing and changes to its criminal laws. The focus of this amendment applies to changes to the business license process.

Josh Johnson, Assistant Dir. of Plan Services, reviewed the business license criteria. The application requirements for Medical Marijuana facilities includes a business license, proof of state facility license, zoning approval (verified buffer requirement survey), proof of no sales taxed owed to Missouri Department of Revenue and payment of a \$50 fee. Once approved, the business license must be renewed yearly.

Mr. Johnson added the city has the authority, through the Police Department, to at any time inspect the facilities and may revoke or suspend the license if there is a violation or they refuse the city entry. In addition, no one under 18 years of age may enter the premises.

Chairperson Forte inquired if medical marijuana will be charged sales tax. Mr. Johnson replied yes. Mr. Bushek agreed. He further explained the name “medical marijuana” is a distinction between a medical condition and a medicine. The law identifies medical conditions and the constitutional provision provides for the use of marijuana to treat a medical condition. It specifically does not treat marijuana as a drug because the state needs to maintain the taxability of it as a substance. If regarded as a drug, under the new law, it becomes tax exempt. An important distinction is its purpose to treat a medical condition as a plant substance sold at dispensaries, and not to treat it as a drug. Dispensaries are therefore different from pharmacies.

However, while dispensaries may not impose an additional tax, the constitution does impose an additional 4% tax to be used for a veterans fund. The benefits of it being taxable is what leads to the conclusion medical marijuana is not a drug, but rather used to treat medical conditions.

Committee member DeMoro asked how states regulate the collection of taxes on marijuana if it is illegal on the federal level. Mr. Bushek replied it depends on how it is structured based on the state’s laws. To avoid entanglement on federal criminal laws, states must keep the marijuana contained in the state and regard it as a distinct purpose to treat medical conditions. Because interstate commerce is illegal, the seeds to grow the plants and all plants used to make the products must come from within the state’s borders.

Committee member Lopez asked if the federal government has challenged any states where marijuana is legal. Mr. Bushek replied he has not had the opportunity to research the criminal side of the issue. He hopes to have more information when the city reviews the criminal aspect in the third phase.

Chairperson Forte asked how the dispensaries are supposed to dispose of the marijuana. Mr. Dunning reported the city has an anti-scavenger ordinance where rummaging through trash is an offense. However, he was not certain how or if this applies to disposing of marijuana.

Mr. Forest Palmer, Odessa, Missouri, and representative of Kansas City Cannabis Company, replied in response to Chairperson Forte's question about disposing of marijuana, the product has to be destroyed and the code attached to the product reported to the Department of Health and Senior Services. No marijuana product is allowed to be thrown away.

After no further discussion, Committee Member Lopez made a motion, seconded by Vice Chair DeMoro, to recommend approval of the Ordinance to the City Council. The motion carried unanimously.

C. [2019-2907](#) Presentation and Discussion of Special Events, Parades, and Play Street/Block Party events

Various staff from Development Services, Fire, Police, Public Works and Administration Departments provided information about the current processes for special events, parades, block parties etc.

The types and number of special events vary from year to year however, requests for block parties are increasing and are the most requested, followed by athletic events (5K, 10K runs) then parades and entertainment events (Oktoberfest, Downtown Days). This includes Parks and Recreation events, which require a special use permit and paid fees. As requests increase for special event permits, there are concerns about the number of events scheduled, location of the events, impacts of street closures and increased cost to the city.

However, sometimes requests are denied and common reasons include late notice, multiple requests for same date (based on a first come, first serve policy) or not enough resources for safety issues. Staff utilizes a community calendar to review requests before approving or denying.

City expenses vary from events. While most events cover city costs, no fees are required for parades and therefore the city does not recoup expenses. Often additional staff is required with these events for security, maintaining perimeters, placing barricades, etc. Police staff receives overtime or special duty pay for these events, which will increase over time as staff salaries increase.

The location of the event affects costs as well. Off road events diminishes costs such as those located at Legacy Park, Unity Village, or school grounds. However, there are additional safety and liability issues when blocking public streets. Discussion included looking at privatizing traffic control for street closures and coordinating a meeting with the school district to review event logistics and costs (parades, athletic runs).

Some sponsors (athletic runs) look for and hold events at cities with the least expensive fees even though they may have corporate sponsors to help cover costs. Another challenge for athletic runs is finding sufficient parking for participants, which is why several events take place in the downtown area to utilize the public parking garage.

The Fire Dept. is invited to attend all parades, block parties (first come, first serve) and serve as standbys for professional firework displays (Legacy Blast, Lakewood, Raintree, Greenwood, weddings, etc.) They are required to have fire apparatus and staff on site for firework displays. Currently there is no charge for fireworks standbys, while fees in the regional area range from zero to \$200.

Additionally, the Fire Dept. receives requests for medical standbys for high school football games, Special Olympics and fireguard operations at no charge for using on-duty units. The Night Flight run at Legacy Park requires an off road vehicle and crew (overtime pay). Medical standby requests at athletic runs are recommended to use private standbys.

Donnie Rodgers, Executive Dir. of Downtown Lee's Summit Main Street provided additional comments and stated Downtown Days is their largest fundraiser. While some special events increase sales taxes, merchants have requested no events on holiday weekends and no back-to-back events in the downtown area. They are also appreciative of the increased signage for the 5K events downtown.

The committee agreed these types of events benefit the community and asked staff to research the following and bring their findings back to the committee:

- Look at other cities schedules of fees/best practices
- Determine criteria for scheduling events
- Review and report on the number of events
- Review cost for school facilities
- Look at privatizing traffic control (insurance, security, barricades) to minimize city risk and liability
- Distinguish between community-wide events and individual events and implement a policy
- Determine how to educate and communicate with citizens

6. Roundtable

Committee Member DeMoro stated his appreciation to staff on their research on medical marijuana.

7. Adjournment

There being no further business, Chairperson Forte adjourned the meeting at 5:21 P.M.

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Packet Information

File #: TMP-1329, **Version:** 1

An Ordinance amending Chapter 17, Offenses, Article VIII of the Code of Ordinances for the City of Lee's Summit, Missouri, to update provisions regarding Controlled Substances and Comply with Article XIV of the Missouri Constitution.

Issue/Request:

An Ordinance amending Chapter 17, Offenses, Article VIII of the Code of Ordinances for the City of Lee's Summit, Missouri, pertaining to Controlled Substances and Medical Marijuana.

Background:

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 law enforcement and City prosecutors. The law provides that the State Department of Health and Senior Services ("Department") has 240 days from the effective date of the provision to establish rules, which it did via emergency regulations that were finalized on June 3, 2019.

Despite the enactment of the Amendment 2, marijuana remains illegal under Federal Law and a controlled substance under Missouri law except when used strictly pursuant to the provisions of the Amendment as well as all rules and regulations promulgated by the Department related to medical marijuana. To date, the Missouri General Assembly has not amended or revoked the statutes criminalizing any and all marijuana use or possession.

To comply with Amendment 2, staff reviewed Chapter 17, Offenses of the Code of Ordinances for the City of Lee's Summit, Missouri (the "Code") for provisions that needed modified to bring the City into compliance. Article VIII, "Controlled Substances" of Chapter 17 of the Code was the only area that needed amended.

The amendments revise existing provisions of Article VIII that would violate Amendment 2 or the regulations promulgated by the Department. The amendments also added sections to Article VIII that deal with providing a valid identification card to possess medical marijuana upon lawful request; disposal of medical marijuana; and consuming medical marijuana in a public place.

Finally, staff also revised several definitions to match updates to such terms in the Revised Statutes of Missouri.

Proposed Committee Motion:

I move to recommend to City Council for approval an Ordinance amending Chapter 17, Offenses, Article VIII of the Code of Ordinances for the City of Lee's Summit, Missouri, to update provisions regarding Controlled Substances and Comply with Article XIV of the Missouri Constitution.

Dan White, Chief Counsel of Management and Operations

BILL NO.

AN ORDINANCE AMENDING CHAPTER 17, OFFENSES, ARTICLE VIII OF THE CODE OF ORDINANCES FOR THE CITY OF LEE'S SUMMIT, MISSOURI, TO UPDATE PROVISIONS REGARDING CONTROLLED SUBSTANCES AND COMPLY WITH ARTICLE XIV OF THE MISSOURI CONSTITUTION.

WHEREAS, Chapter 17 of the City of Lee's Summit ("City") Code of Ordinances ("Code") sets forth rules and regulations regarding criminal offenses; and,

WHEREAS, Article VIII of Chapter 17 of the Code deals with rules and regulations pertaining to controlled substances; and,

WHEREAS, on November 6, 2018, the voters of the State of Missouri approved Amendment 2 to the Missouri Constitution adding Article XIV to the Missouri Constitution, titled, "Right to Access Medical Marijuana" (the "Amendment"); and,

WHEREAS, despite the enactment of the Amendment, marijuana remains illegal under Federal Law and a controlled substance under Missouri law except where used strictly pursuant to the provisions of the Amendment as well as all rules and regulations promulgated by Department of Health and Senior Services related to medical marijuana; and,

WHEREAS, the City desires to amend provisions of the Code regarding offenses dealing with controlled substances in order to comply with the Amendment and rules and regulations promulgated by Department of Health and Senior Services related to medical marijuana; and,

WHEREAS, the City desires to update other portions of Article III of Chapter 17 of the Code to match updates in and better align with the Revised Statutes of Missouri that deal with drug paraphernalia and controlled substances.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. Chapter 17, Offenses, Article VIII, is hereby amended in the manner shown on the copy attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 2. It is the City Council's intention and is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances, and the sections of this Ordinance may be renumbered as appropriate to accomplish such intention.

SECTION 3. Should any section, sentence or clause of this Ordinance be declared invalid or unconstitutional, such declaration shall not affect the validity of the remaining sections, sentences, or clauses.

SECTION 4. This Ordinance shall be in full force and effect from and after the date of its adoption, passage, and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2019.

BILL NO.

ATTEST:

Mayor *William A. Baird*

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said City this _____ day of _____, 2019.

ATTEST:

Mayor *William A. Baird*

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

Exhibit A

Chapter 17 – OFFENSES

Article VIII. – CONTROLLED SUBSTANCES

Revisions to the Code are shown in the underline and ~~striketrough~~ format. Comments which are not part of the Code amendments are [*in italics and brackets.*]

Sec. 17-236 – Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administer shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is ~~direct application of to apply~~ a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

- A. A practitioner (or, in his presence, by his authorized agent); or
- B. The patient or research subject at the direction and in the presence of the practitioner.

Close proximity shall mean within five hundred (500) feet on a straight line commencing at the property lines nearest to each other.

Controlled substance shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is any drug, substance or immediate precursor in Schedules I through V listed in Chapter 195 of the RSMo. ~~195.005 to 195.425.~~

Controlled substance analogue shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

- (a) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or
- (b) With respect to a particular individual, which that individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II. The term does not include a controlled substance; any substance for which there is an approved new drug application; any substance for which an exemption is in effect for investigational use, for a particular person, under Section 505 of the federal Food, Drug and Cosmetic Act (21 U.S.C. Section 355) to the extent conduct with respect to the substance is pursuant to the exemption; or any substance to the extent not intended for human consumption before such an exemption takes effect with respect to the substance.

Deliver or delivery shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is the actual, constructive or attempted transfer from one (1) person to another of drug paraphernalia or of a controlled substance, or an imitation controlled substance whether or not there is an agency relationship, and includes a sale.

Department shall mean the same as the term is defined in Article XIV of the Missouri Constitution, as amended, which is the department of health and senior services, or its successor agency.

Dispense shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is to deliver a narcotic or controlled dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.

Distribute shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is to deliver other than by administering or dispensing a drug or controlled substance.

Drug shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is:

- A. Substances recognized as drugs in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States or Official National Formulary, or any supplement of any of them; or
- B. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals; or
- C. Substances, other than food, intended to affect the structure or any function of the body of humans or animals; or
- D. Substances intended for use as a component of any article specified in this definition. It does not include devices or their components, parts or accessories.

Drug paraphernalia shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is

- A. ~~Drug paraphernalia shall mean a~~All equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or an imitation controlled substance in violation of this article. It includes, but is not limited to:
 - 1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
 - 2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances or imitation controlled substances;
 - 3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance or imitation controlled substance;
 - 4. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances or imitation controlled substances;
 - 5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances or imitation controlled substances;
 - 6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances or imitation controlled substances;
 - 7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
 - 8. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances or imitation controlled substances;
 - 9. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances or imitation controlled substances;

10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or imitation controlled substances;
11. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances or imitation controlled substances into the human body;
12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - b. Water pipes;
 - c. Carburetion tubes and devices;
 - d. Smoking and carburetion masks;
 - e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - f. Miniature spoons or cocaine vials;
 - g. Chamber pipes;
 - h. Carburetor pipes;
 - i. Electric pipes;
 - j. Air-driven pipes;
 - k. Chillums;
 - l. Bongs;
 - m. Ice pipes or chillers

13. Substances used, intended for use, or designed for use in the manufacture of a controlled substance;

- B. In determining whether an object, product, substance or material is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:
1. Statements by an owner or by anyone in control of the object concerning its use;
 2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance or imitation controlled substance;
 3. The proximity of the object, in time and space, to a direct violation of this article;
 4. The proximity of the object to controlled substances or imitation controlled substances;
 5. The existence of any residue of controlled substances or imitation controlled substances on the object;
 6. Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons who he knows, or reasonably should know, intend to use the object to facilitate a violation of this article; the innocence of an owner, or of anyone in control of the object as to a direct violation of this article, shall not prevent a finding that the object is intended for use as drug paraphernalia;
 7. Instructions, oral or written, provided with the object concerning its use;
 8. Descriptive materials accompanying the object which explain or depict its use;
 9. National and local advertising concerning its use;
 10. The manner in which the object is displayed for sale;
 11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or released items to the community, such as a licensed distributor or dealer of tobacco products;
 12. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
 13. The existence and scope of legitimate uses for the object in the community;
 14. Expert testimony concerning its use;

15. The quantity, form or packaging of the product, substance or material in relation to the quantity, form or packaging associated with any legitimate use for the product, substance or material.

Imitation controlled substance shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is:

- A. A substance that is not a controlled substance, which by dosage, unit appearance (including color, shape, size and markings), or by representations made, would lead a reasonable person to believe that it is a controlled substance. In determining whether a substance is an imitation controlled substance, the court or other authority concerned should consider, in addition to all other logically relevant factors, the following:
 - 1. Whether the substance was approved by the federal Food and Drug Administration for over-the-counter (nonprescription or non-legend) sales and was sold in the federal Food and Drug Administration package, with the federal Food and Drug Administration approval labeling information;
 - 2. Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
 - 3. Whether the substance is packaged in a manner normally used for illicit controlled substances;
 - 4. Prior convictions, if any, of an owner or anyone in control of the object, under State or Federal law related to controlled substances or fraud;
 - 5. The proximity of the substances to controlled substances;
 - 6. Whether the consideration tendered in exchange for the non-controlled substance substantially exceeds the reasonable value of the substance considering the actual chemical composition of the substance and, where applicable, the price at which over-the-counter substances of like chemical composition sell.
- B. An imitation controlled substance does not include a placebo or registered investigational drug either of which was manufactured, distributed, possessed or delivered in the ordinary course of professional practice and research.

License or *licensed* shall refer to persons required to obtain annual registration as issued by the State Division of Health as provided by Section 195.030, RSMo ~~195.030~~.

Manufacture shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is the production, preparation, propagation, compounding, or processing of drug paraphernalia or a controlled substance or an imitation controlled substance either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. ~~except that~~ This term does not include the preparation or compounding of a controlled substance or an imitation controlled substance or the preparation, compounding, packaging or labeling of a narcotic or dangerous drug:

- A. By a practitioner as an incident to his administering or dispensing of a controlled substance or an imitation controlled substance in the course of his professional practice; or
- B. By a practitioner or by his authorized agent under his supervision, for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

Marijuana or *marihuana* shall mean the same as the term is defined in Article XIV of the Missouri Constitution, as amended, 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.

~~Marijuana shall mean all parts of all varieties of the plant genus Cannabis, in any species or form thereof, including, but not limited to Cannabis Sativa L., Cannabis Indica, Cannabis Americana, Cannabis Ruderalis, and Cannabis Gigantea, whether growing or not, the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.~~

Marijuana-infused Products same as the term is defined in Article XIV of the Missouri Constitution, as amended, 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.

Medical Marijuana Cultivation Facility shall mean the same as the term is defined in Article XIV of the Missouri Constitution, as amended, 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.

Medical Marijuana Dispensary Facility shall mean the same as the term is defined in Article XIV of the Missouri Constitution, as amended, which is 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 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 ones of these uses.

Medical Marijuana-Infused Products Manufacturing Facility shall mean the same as the term is defined in Article XIV of the Missouri Constitution, as amended, which is 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 shall mean the same as the term is defined in Article XIV of the Missouri Constitution, as amended, which is a facility certified by the department to acquire, test, certify, and transport marijuana

Medical Marijuana Transportation Facility shall mean the same as the term is defined in Article XIV of the Missouri Constitution, as amended, which is a facility certified by the department to transport marijuana to a qualifying patient, a primary caregiver, a medical marijuana cultivation facility, a medical marijuana-infused products manufacturing facility, a medical marijuana dispensary facility, a medical marijuana testing facility, or another medical marijuana-transportation facility.

Minor shall mean any person who has not attained seventeen (17) years of age.

Pharmacist shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is an individual currently licensed by the State Board to practice the profession of pharmacy in this State, a licensed pharmacist as defined by the laws of Missouri, and where the context so requires, the owner of a store or other place of business where controlled substances are compounded or dispensed by a licensed pharmacist; but nothing in this article shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of Missouri.

Place of display shall mean any museum, library, school or other similar public place upon which business is not transacted for a profit.

Possessed or possessing a controlled substance shall mean a person, with the knowledge of the presence and nature of a substance, has actual or constructive possession of the substance. A person has actual possession if he has the substance on his person or within easy reach and convenient control. A person who, although not in actual possession, has the power and the intention at a given time to exercise dominion or control over the substance either directly or through another person or persons is in constructive possession of it. Possession may also be sole or joint. If one (1) person alone has possession of a substance possession is sole. If two (2) or more persons share possession of a substance, possession is joint.

Practitioner shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is a physician, dentist, podiatrist, as defined in RSMo Ch. 330, veterinarian, scientific investigator, pharmacy, hospital or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer or to use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this State, or a pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this State.

Premises shall mean a business establishment, and the structure of which it is a part, facilities and appurtenances therein and grounds, areas and facilities held out for the use of patrons.

Premises open to minors shall mean any business establishment which sells its wares or merchandise to minors or which permits minors to enter into its place of business.

Prescription shall mean a written order and, in cases of emergency, a telephone order issued by a practitioner in good faith in the course of his professional practice to a pharmacist for a drug for a particular patient which specifies the date of its issue, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, the directions for use of such drug, and the signature of such practitioner.

Primary Caregiver shall mean the same as the term is defined in Article XIV of the Missouri Constitution, as amended, which is an 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.

Production shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which includes the manufacture, planting, cultivation, growing or harvesting of drug paraphernalia, of a controlled substance or an imitation controlled substance.

Qualifying Medical Condition shall mean the same as the term is defined in Article XIV of the Missouri Constitution, as amended, which is the condition of, symptoms related to, or side-effects from the treatment of:

- A. Cancer;
- B. Epilepsy;
- C. Glaucoma;
- D. Intractable migraines unresponsive to other treatment;
- E. A chronic medical condition that causes severe, persistent pain or persistent muscle spasms, including but not limited to those associated with multiple sclerosis, seizures, Parkinson's disease, and Tourette's syndrome;
- F. Debilitating psychiatric disorders, including, but not limited to, posttraumatic stress disorder, if diagnosed by a state licensed psychiatrist;
- G. Human immunodeficiency virus or acquired immune deficiency syndrome;
- H. A chronic medical condition that is normally treated with a prescription medication that could lead to physical or psychological dependence, when a physician determines that medical use of marijuana could be effective in treating that condition and would serve as a safer alternative to the prescription medication;
- I. Any terminal illness; or
- J. In the professional judgment of a physician, any other chronic, debilitating or other medical condition, including, but not limited to, hepatitis C, amyotrophic lateral sclerosis, inflammatory bowel disease, Crohn's disease, Huntington's disease, autism, neuropathies, sickle cell anemia, agitation of Alzheimer's disease, cachexia, and wasting syndrome.

Qualifying Patient shall mean the same as the term is defined in Article XIV of the Missouri Constitution, as amended, which is a Missouri resident diagnosed with at least one qualifying medical condition.

School shall mean any public or private elementary, junior high or high school, or any college, junior college or university.

Synthetic Cannabinoid shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which includes unless specifically excepted or unless listed in another schedule, any natural or synthetic material, compound, mixture, or preparation that contains any quantity of a substance that is a cannabinoid receptor agonist, including but not limited to any substance listed in paragraph (II) of subdivision (4) of subsection 2 of Section 195.017, RSMo. and any analogues; homologues; isomers, whether optical, positional, or geometric; esters; ethers; salts; and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, or salts is possible within the specific chemical designation, however, it shall not include any approved pharmaceutical authorized by the United States Food and Drug Administration.

Warehouseman shall mean a person who, in the usual course of business, stores drugs for others, is lawfully entitled to possess them and who has no control over the disposition of such drugs except for the purpose of such storage.

Wholesaler shall mean the same as the term is defined in Section 195.010, RSMo., as amended, which is a person who supplies drug paraphernalia or controlled substances or imitation controlled substances that he himself has not produced or prepared, on official written orders, but not a prescription.

Sec. 17-237. - Use or Possession for Use of Drug Paraphernalia.

Except and only to the extent as authorized by Article XIV of the Missouri Constitution including any and all rules and regulations promulgated by the Department relating to legalized medical marijuana, it shall be unlawful for any person to knowingly use, or ~~to~~ possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test,

analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or imitation controlled substance in violation of this article.

Sec. 17-238. - ~~Delivery, Possession,~~ Manufacture of Drug Paraphernalia.

Except and only to the extent as authorized by Article XIV of the Missouri Constitution including any and all rules and regulations promulgated by the Department relating to legalized medical marijuana, it shall be unlawful for any person to ~~deliver, possess with intent to deliver, or~~ manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or imitation controlled substance in violation of this article.

Sec. 17-239. - ~~Delivery, Possession,~~ Manufacture of Imitation Controlled Substances.

It shall be unlawful for any person to knowingly deliver, possess, ~~possess with intent to deliver, or manufacture with intent to deliver, or cause to be delivered~~ any imitation controlled substance ~~to another person.~~

Sec. 17-240. - ~~Regulation of Controlled Substances.~~

- ~~A. It shall be unlawful for any person to sell, give away, manufacture, use or possess for any purpose whatever any controlled substance except as provided in this section.~~
- ~~B. Distribution of controlled substances by licensed practitioners is permitted under the following conditions:
 - ~~1. *Practitioners.* A licensed practitioner shall be permitted to dispense or distribute controlled substances and drugs to a person in the course of his professional practice only. Such licensed practitioner shall not be permitted to possess controlled substances for any other purpose.~~
 - ~~2. *Pharmacists.* A licensed pharmacist shall be permitted to dispense or distribute controlled substances and drugs to persons under and in pursuance of written prescriptions issued by any licensed practitioner. Such licensed pharmacist shall not be permitted to possess controlled substances for any other purpose.~~
 - ~~3. *Record of distribution.* All instances of professional distribution of controlled substances and drugs as provided for in this section shall be recorded in suitable form and filed and preserved in a manner so as to be readily accessible for inspection by any law enforcement officer of the City.~~
 - ~~4. *Renewal prohibited.* No prescription for controlled substances shall be renewed or refilled.~~~~
- ~~C. Any person shall be permitted to possess controlled substances distributed or dispensed to him under the provisions of this section, but such possession and use must be in accordance with the prescription and prescribed treatment.~~
- ~~D. A person who is a licensed manufacturer, warehouseman or wholesaler of controlled substances shall be permitted to possess controlled substances for the purposes of wholesale delivery, compounding, preparation, and manufacture only. Such controlled substances shall only be resold to other persons permitted by this section to resell, or dispense or distribute controlled substances in the course of a licensed manufacturing or wholesale business, a licensed professional practice, or a licensed pharmaceutical business. A licensed manufacturer or wholesaler permitted to possess controlled substances in this subsection may also be a licensed pharmacist and may dispense or distribute narcotic drugs upon written prescription as provided in this section, but shall not consume~~

~~or permit to be consumed any controlled substances except upon written prescription as provided in this section.~~

- ~~E. All controlled substances in the possession of any person convicted of a violation of this section, shall be seized by, confiscated by, forfeited to the Chief of Police, who shall make proper disposition thereof.~~
- ~~F. This section shall not apply to the administering or distributing or dispensing of any medical preparation that contains in one (1) fluid ounce, or if a solid or semisolid preparation in one (1) avoirdupois ounce, not more than one (1) grain of codeine or any of its salts. Provided that the preparation administered or distributed or dispensed shall contain some drug of medicinal qualities in addition to those possessed by the controlled substances alone. Such preparation shall be administered, distributed, or dispensed in good faith and not for the purpose of evading this subsection. However, no person shall administer, dispense or sell, under the exemption of this section, any preparation included in this subsection, when he knows, or can by reasonable diligence ascertain, that such administering, dispensing or selling will provide the person to whom or for whose use such preparation is administered, dispensed or sold, within any forty eight (48) consecutive hours, with more than four (4) grains of codeine or any of its salts.~~
- ~~G. The provisions of this section restricting the possession and control of controlled substances shall not apply to common carriers or warehousemen engaged in lawfully transporting or storing such controlled substances, nor to any employee of such common carriers or warehousemen within the scope of his employment, nor to public officers or employees in the performance of official duties requiring possession or control of controlled substances, nor to persons aiding such officers or employees in performance of such duties.~~

Sec. 17-240 - Possession of a Controlled Substance

- A. No person shall knowingly possess a controlled substance, marijuana, or synthetic cannabinoid, except and only to the extent as authorized by Chapter 579 or Chapter 195 of the Revised Statutes of Missouri, or Article XIV of the Missouri Constitution, including any and all rules and regulations promulgated by the Department relating to legalized medical marijuana.
- B. As described above in subsection A, the following may possess marijuana pursuant to Article XIV of the Missouri Constitution and its accompanying State regulations:
 - 1. A qualifying patient for the patient's own personal use, provided that a qualifying patient shall not possess more than four (4) ounces of dried, unprocessed marijuana in a thirty (30) day period, unless such patient is able to possess more than such limits pursuant to 19 CSR 30-195.030(5)(E), as amended, in which case such person shall not possess more than amount of marijuana the person's two physicians have certified the person to possess;
 - 2. A primary caregiver for a qualifying patient(s), but only when transporting marijuana to a qualifying patient(s) or when accompanying a qualifying patient(s); and
 - 3. An owner or employee of a medical marijuana facility licensed by the State of Missouri while on the premises of said facility, or when transporting to a qualified patient's or primary caregiver's residence or another medical marijuana facility licensed by the State of Missouri.
- C. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this Section, it shall not be necessary to include any exception,

excuse, proviso, or exemption contained in (i) this Section, (ii) Chapter 579 of the Revised Statutes of Missouri, or (iii) Chapter 195 of the Revised Statutes of Missouri, and the burden of proof of any such exception, excuse, proviso or exemption shall be upon the defendant.

[NOTE: The following sections are being added to Chapter 17, Offenses, Article VIII, Controlled Substances. The section numbers listed next to the section titles are currently reserved in the City Code and serve as a suggestion to the codifiers of the appropriate location in the City Code for each section.]

Sec. 17-241 Failure to Produce Medical Marijuana Identification

Any person in possession of marijuana, including a marijuana-infused product, shall, immediately upon request of any law enforcement officer, produce a valid identification card issued by either the Department or the respective equivalent identification card or authorization issued by another state or political subdivision of another state, authorizing the person to possess the amount of marijuana in such person's possession as provided by Article XIV of the Missouri Constitution. Any person who fails to produce such identification card as required by this Section shall be guilty of the offense of failure to produce a medical marijuana identification card.

Sec. 17-242 Disposal of Medical Marijuana

A person must dispose of medical marijuana or medical marijuana-infused products in the manner proscribed by the rules of the Department. The City reserves the right to enforce the rules established by the Department with regard to disposal of marijuana.

Sec. 17-243 Consumption of Medical Marijuana in Public

- A. No person shall consume marijuana, including marijuana for medical use, in a public place.
- B. As used in this Section only, "public place" means the same as the term in defined in 19 CSR 30-95.010(33), as amended, which is any public or private property, or portion of public or private property, that is open to the general public, including, but not limited to, sidewalks, streets, bridges, parks, schools, and businesses. However, for purposes of designating a nonpublic place within a public place, the owner or entity with control of any such property may, but is not required to, provide one (1) or more enclosed, private spaces where one (1) qualifying patient and, if required by the owner or entity with control of any such property, a representative of such owner or entity, may congregate for the qualifying patient to consume medical marijuana. The qualifying patient may be accompanied by the family of the qualifying patient, the qualifying patient's primary caregiver, and/or the qualifying patient's physician. The owner or entity with control of any such property may provide such a space by individual request or designate such a space for ongoing use and may limit use of medical marijuana in that space to uses that do not produce smoke. Any such permission shall be given in writing and provided to the qualifying patient or publicly posted prior to a qualifying patient's use of medical marijuana in that space. "Public place" shall not include:
 - 1. The residence of the person administering medical marijuana or the residence of another person when the person in control of that property has consented to the administering of marijuana; or
 - 2. A licensed medical facility with the consent of the person or persons in charge of that facility.

Packet Information

File #: TMP-1330, **Version:** 1

An Ordinance amending Chapter 1, General Provisions, Section 1-13 of the Code of Ordinances for the City of Lee's Summit, Missouri, to update penalty provisions in accordance with Missouri law.

Issue/Request:

An Ordinance amending Chapter 1, General Provisions, Section 1-13 of the Code of Ordinances for the City of Lee's Summit, Missouri, to update penalty provisions in accordance with Missouri law.

Background:

Section 1-13, "Penalties for Code, Ordinance Violations" of the City of Lee's Summit ("City") Code of Ordinances ("Code") sets forth penalties for violating the Code or a City ordinance, unless the Code or ordinance sets forth a different penalty.

In 2015, the Missouri General Assembly passed Senate Bill 5 which, among other things, codified Sections 479.350 and 479.353 of the Revised Statutes of Missouri ("RSMo."). These statutes limit the penalties the City can impose for "minor traffic violations" and "municipal ordinance violations" as those terms are defined in Section 479.350.

A minor traffic violation is a violation of a municipal traffic ordinance, except those that involve an accident or injury; the Missouri Department of Revenue assess points or could assess more than four points upon conviction; occur in a construction or school zone; or exceed the speed limit by more than nineteen miles per hour. Generally, a municipal ordinance violation involves an ordinance dealing with zoning, illegal dumping, or public nuisances such as debris and weed abatement.

Section 479.353 limits the penalty to minor traffic violations to \$225.00, including court costs. The penalty for a municipal ordinance violation is limited to \$200.00 for the first violation. If, within twelve months, a second violations occurs, the penalty increases to \$275.00; a third violation is \$350.00; and a fourth and subsequent violations have a penalty of \$450.00. These limits include any assessed court costs.

While the City has complying with these laws since they were adopted, it has never codified them in the Code. This Ordinance amends Section 1-13 of the Code to incorporate these limitations.

Proposed Committee Motion:

I move to recommend to City Council for approval an Ordinance amending Chapter 1, General Provisions, Section 1-13 of the Code of Ordinances for the City of Lee's Summit, Missouri, to update penalty provisions in accordance with Missouri law.

Dan White, Chief Counsel of Management and Operations

BILL NO. 19-

AN ORDINANCE AMENDING CHAPTER 1, GENERAL PROVISIONS, SECTION 1-13 OF THE CODE OF ORDINANCES FOR THE CITY OF LEE'S SUMMIT, MISSOURI, TO UPDATE PENALTY PROVISIONS IN ACCORDANCE WITH MISSOURI LAW.

WHEREAS, Section 1-13, "Penalties for Code, Ordinance Violations" of the City of Lee's Summit ("City") Code of Ordinances ("Code") sets forth penalties for violating the City Code or a City ordinance; and,

WHEREAS, State law places limits on the penalties a City can impose for violations of certain provisions in the City Code; and,

WHEREAS, the City Council desires to amend provisions of the City's Code regarding violations of the City Code or City ordinances to incorporate the limits imposed by State law.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. Chapter 1, General Provisions, Section 1-13, is hereby amended to add the underlined language and delete the struck-through and bolded language:

Sec. 1-13. - Penalties for Code, Ordinance Violations.

A. Whenever in this Code or in any ordinance of the City any act is prohibited or is made or declared to be unlawful or an offense, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and where no specific penalty is provided therefor, the violation of any such provision of this Code or any ordinance shall be punished by a fine of not ~~more than~~ to exceed five hundred dollars (\$500.00), or by imprisonment not exceeding ninety (90) days, or both such fine and imprisonment, except as provided in Subsection B. and C. of this Section. Each day any violation of this Code or of any ordinance continues shall constitute a separate offense.

~~**B. Whenever in this Code or in any ordinance of the City a specific penalty is provided by reference to this subsection, punishment shall be by a fine of not more than three hundred dollars (\$300.00) or by imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment.**~~

B. Any "minor traffic violation", as defined by Section 479.350, RSMo., as amended, shall be punishable by a fine not to exceed two hundred twenty-five dollars (\$225.00) including court costs, but only when State law requires court costs to be included in such total fine.

~~**C. Whenever in this Code or in any ordinance of the City a specific penalty is provided by reference to this subsection, punishment shall be by a fine of not more than two hundred dollars (\$200.00).**~~

C. Any "Municipal ordinance violation", as defined by Section 479.350, RSMo., as amended, committed within a twelve-month period, beginning with the first

BILL NO. 19-

violation, shall be punishable by a fine, including any court costs, not to exceed: two hundred dollars (\$200.00) for the first offense; two-hundred seventy-five dollars (\$275.00) for the second offense; three-hundred fifty dollars (\$350.00) for the third municipal ordinance violation; and four-hundred fifty dollars (\$450.00) for the fourth and any subsequent violation.

SECTION 2. It is the City Council's intention and is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances, and the sections of this Ordinance may be renumbered as appropriate to accomplish such intention.

SECTION 3. Should any section, sentence or clause of this Ordinance be declared invalid or unconstitutional, such declaration shall not affect the validity of the remaining sections, sentences, or clauses.

SECTION 4. This Ordinance shall be in full force and effect from and after the date of its adoption, passage, and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said City this _____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*