

Legislation Text

File #: 2019-2881, **Version:** 1

Public Hearing - Application #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.

Issue/Request:

An amendment to the Unified Development Ordinance, Chapter 33 LSMO Code of Ordinances, pertaining to 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: 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) easements shall be made along the shortest path between the demarcation points that can lawfully be traveled by foot."

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.

Committee Recommendation: 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.

Proposed City Council Motion:

I move for a second reading of a 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.

Josh Johnson, AICP, Assistant Director of Plan Services
David Bushek, Chief Counsel of Economic Development and Planning