

# REPORT TO CITY COUNCIL



To: Honorable Mayor and Members of the City Council  
From: Debra M. Irvin, City Manager  
Date: January 18, 2019  
Subject: Referral to Plan Commission – Adding Medical Marijuana to Zoning Code

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**SUBJECT:** **Case # 19-03** a request from the City Manager to amend the zoning code by adding amendments to the Zoning Code relating to marijuana cultivation, testing and dispensary facilities in Zoning Districts (C2-C3, AD, AD-2, and M1).

We have investigated the Subject item, above and present the following as our findings:

**PETITIONER:** City Manager

**BACKGROUND:** Marijuana Amendment 2 passed with 66 percent of the voters on Tuesday, November 6, 2018 making it the most popular issue or candidate on the entire Missouri ballot. The law took effect December 6, 2018. The governor's office and Missouri Department of Health and Senior Services are together to talk about rulemaking.

Although the amendment legalizes growing, manufacturing, selling and consuming marijuana and marijuana products for medicinal use, it will take some time before people can actually use medicinal marijuana, probably around 2020.

The state has six months from December 6, 2018 to create the application process, then it could be another three to six months before they start accepting applications to use or grow marijuana at home and for dispensaries.

In this amendment, patients can grow up to six plants; caretakers up to 18. There are nine qualifying conditions to use medical marijuana, which include: PTSD, chronic pain, seizures, cancer, and other debilitating conditions. If a physician knows they have a qualifying condition and they want to use marijuana, then they issue a certification.

All activity will be regulated by the Missouri Department of Health and Human Services. The four percent (4%) sales tax on marijuana sales will fund veterans' healthcare programs.

**SITE LOCATION:** Zoning Districts (C2-C3, AD, AD-2, and M1) under Special Use Permit

## **SUPPORTING DOCUMENTS**

- Padraic Corcoran – Article – Medical Marijuana in Missouri

**RECOMMENDATION:** Staff recommends the referral to the Plan Commission

**Respectfully submitted,**

# FAQ Review: Medical Marijuana in Missouri

by Padraic Corcoran

The following are responses to some frequently asked questions. The answers are not intended as legal advice and are not a substitute for consulting with your legal counsel.

## What was Amendment 2?

Amendment 2 is an amendment to the Missouri Constitution approved by voters on November 6, 2018. Generally, Amendment 2 permits doctors to recommend marijuana for medical purposes to patients with qualifying medical conditions and allows for the limited legal production, distribution, sale and purchase of marijuana for medical use. See Article XVI, Section 1(1) Missouri Constitution.

## How does this being a constitutional amendment affect the Legislature's authority to amend the law?

The General Assembly may supplement constitutional provisions but cannot enact legislation that would be inconsistent with the Missouri Constitution. *State ex rel. Creamer v. Blair*, 270 S.W.2d 1 (Mo. Banc. 1954). This means that while the General Assembly may pass legislation that facilitates, provides for enforcement of, or implements Amendment 2, it cannot pass legislation that would be inconsistent with Amendment 2.

In line with the general legal principal above, Amendment 2 grants the General Assembly the authority to “enact laws consistent with [Amendment 2], or otherwise effectuating the patient’s rights of [Amendment 2]” but prohibits the General Assembly from enacting “laws that hinder the right of Qualifying Patients to access marijuana for medical use...”

## What is the timetable for the implementation of medical marijuana?

Amendment 2 charges the Missouri Department of Health and Senior Services with the mandate to establish “rules...necessary for the implementation and enforcement

of [Amendment 2] and to ensure the right to, availability, and safe use of marijuana for medical use by Qualifying Patients.” The timelines outlined in Amendment 2 for when DHSS is to begin accepting applications for licenses for medical marijuana facilities are as follows:

1. June 4, 2019 – Application forms and instructions for medical marijuana facilities, qualifying patients, and caregivers will be available.
2. July 4, 2019 – Applications for identification cards for qualifying patients and caregivers will begin to be accepted.
3. Aug. 3, 2019 – Facility applications will begin to be accepted.

## What steps should cities take as the new medical marijuana laws go into effect?

Cities should review their code of ordinances, specifically sections relating to business licenses and offenses, and their zoning code. Also, and as discussed below, cities should review personnel policies, specifically provisions relating to the use of marijuana.

## What effect does Amendment 2 have on cities' drug testing policies and may cities discipline an employee who uses medical marijuana?

Amendment 2 prevents users of medical marijuana from bringing any claim against a former, prospective, or current employer for prohibiting the employee from being under the influence of marijuana while at work or from attempting to work while under the influence of marijuana. Article XVI, Section 7(1)(d) Missouri Constitution. Further, it is likely that use of medical

marijuana would not be protected by the Americans with Disabilities Act. See *James v. City of Costa Mesa*, 700 F.3d 394 (9th Cir. 2012)

## What effect does Amendment 2 have on city revenues?

The sale of medical marijuana is subject to general local sales and uses taxes, but cities may not impose any additional taxes on the sale of marijuana for medical use. Amendment 2 does impose an additional 4 percent tax on the sale of medical marijuana to be deposited in the Missouri Veterans' Health and Care Fund.

## Does Amendment 2 allow for cities to regulate medical marijuana facilities?

Yes, 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 medical marijuana facility. Also, Amendment 2 includes a requirement that a medical marijuana facility may not be initially located within 1000 feet of any then-existing elementary or secondary school, child daycare center, or church; however, this spacing requirement may be decreased if a city chooses.

## Does the federal government still consider marijuana to be a controlled substance? What are the implications of this?

Yes, the federal government still considers marijuana to be a controlled substance. One of the significant implications of this is that the Americans with Disabilities Act’s reasonable accommodation standard is most likely not applicable to the use of medical marijuana because it is still considered illegal drug use at the

Federal level. See *James v. City of Costa Mesa*, 700 F.3d 394 (9th Cir. 2012)

**Do local offense ordinances making possession of Marijuana illegal need to be amended?**

Yes. Amendment 2 makes the possession of marijuana, specifically medical marijuana, legal for qualifying patients and medical marijuana facilities. However, any amendment to local offense ordinances pertaining to the possession of marijuana should be carefully drafted, as possession of medical marijuana is still illegal under certain circumstances. See Article XVI, Section 5(1) Missouri Constitution. 🍃

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