



## REPORT TO CITY COUNCIL

**To:** The Honorable Mayor and City Council Members

**THRU:** Debra M. Irvin, City Manager

**FROM:** Kimberly Smith-Drake, ED Coordinator

**DATE:** May 6, 2020

**SUBJECT:** **Case No. 20-09: Amendment to Ordinance 4527 regarding medical marijuana zoning and amendments to Zoning under the Special Use Process and Amendment of Schedule of Licensing Fees**

The above Subject item has been investigated, and the findings are listed as follows:

**PETITIONER:** Economic Development Coordinator

### **BACKGROUND**

The City Council adopted Ordinance 4527 on March 18, 2019 to amend the City of Berkeley zoning code, Section 400.020 to include licensed medical marijuana facilities as defined by State of Missouri Article XIV, Section 1. Effective December 31, 2019, those classifications were defined in the Code of State Regulations (CSR) Division 30, Division of Regulation and Licensure, Chapter 95, Medical Marijuana, under Title 19 categorically defines agencies and uses that should be added to current Ordinance 4527.

### **ZONING DISTRICTS**

C2, C3, AD, AD-2, and M1, under the Special Use Permit Procedures Section 450.530.

### **JUSTIFICATION**

As of December 31, 2019, the Department of Health and Senior Services (DHSS), Division 30-Division of Regulation and Licensure issued the final, 19-Code of State Regulations (CSR) through Chapter 95 related to Medical Marijuana. The CSR outlines general provisions for the specific categories of medical marijuana operations. Ordinance 4527 and Special Use Permit zoning code Section 400.530 will need to be amended in order to comply with State of Missouri definitions and to provide clarity of the City of Berkeley code. The categories for licensed medical marijuana facilities that will be relevant for the City of Berkeley are; cultivation, dispensary, manufacturing, testing, and transportation.

## **SCHEDULE OF LICENSING FEES**

DHSS has published the State of Missouri fee schedule for medical marijuana licensing and Section 605.090 requires amending to add those fees to Berkeley's Schedule of Licensing fees to reflect those of the State of Missouri.

## **DISTANCE REQUIREMENTS**

19 CSR 30-95.040(4)(B) indicates, *Unless expressly allowed by the local government, no new cultivation, infused products manufacturing, dispensary, or testing 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, daycare, or church.* The City of Berkeley code Section 600.210 B indicates, *No such license shall be granted to any entity which is within three hundred (300) feet of any school, church, park or playground including, but not limited to, day care centers and preschool centers.*

In the cases of medical marijuana facilities, the distance requirement would be amended from the State requirement of one thousand (1,000) feet to Berkeley's code of three hundred (300) feet.

## **FLOOR SPACE**

Pertinent to the Special Use Permit zoning codes of (C2), (C3), AD, AD3 and M1 districts with regard to building size, we request to add the following provision; *Any building being used as a medical marijuana facility shall have a minimum floor area of one thousand (1,000) square feet.*

## **REQUESTED CITY COUNCIL ACTION**

Referral to the City Plan Commission for review and approval of amendments to Ordinance 4527 and zoning codes C2, C3, AD, AD-2 and M1 districts, Special Use Permit Section 400.530, regarding provisions for medical marijuana facilities and floor space requirements within the City of Berkeley. Also, requesting the amendment of the Schedule of License Fees, Section 605.090 to reflect State of Missouri licensing fees.

## **SUPPORTING DOCUMENTS**

1. Staff Report
2. 19 CSR 30-95
3. Zoning Code (C2, C3, AD, AD-2, M1)
4. Schedule of Licensing Fees, Section 605.090
5. Draft Ordinance Amendment

**Respectfully submitted,**

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**Kimberly Smith-Drake**

Introduced by: Council Present

**AN ORDINANCE AMENDING ORDINANCE 4527; AND AMENDMENT TO ZONING OF C2, C3, AD, AD-2 AND M1 DISTRICTS UNDER THE SPECIAL USE PERMIT PROCESS; AND AMENDMENT TO SCHEDULE OF LICENSING FEES RELATING TO MEDICAL MARIJUANA AND RELATED USES**

**WHEREAS**, The State of Missouri permits, licenses and regulates the operation of medical marijuana entities under specific classifications; and

**WHEREAS**, on March 18, 2019 the City Council passed Ordinance 4527 which amended Section 400.020 of the Berkeley Municipal Code to include definitions of medical marijuana in the C2-C3, AD, AD-2, and M-1 Districts; and

**WHEREAS**, the Berkeley Municipal Code should be amended to reflect all approved classifications as provided in State of Missouri Constitution Article XIV, Section 1 and 19 CSR 30.095 which outlines the definition of medical marijuana for medical use and for medical marijuana agencies;

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

**Section 1.** Section 400.020 Definitions, of Chapter 400, Zoning, of the Berkeley Municipal Code is hereby amended to include the following new definitions:

**Medical Marijuana Cultivation Facility** means a facility licensed by the department to acquire, cultivate, process, store, transport, and sell marijuana to a medical marijuana dispensary facility, medical marijuana testing facility, or to a medical marijuana-infused products manufacturing facility.

**Medical Marijuana Dispensary Facility** means a facility licensed by the department to acquire, store, sell, transport, and deliver marijuana, marijuana-infused products, and drug paraphernalia used to administer marijuana as provided for in this section to a qualifying patient, a primary caregiver, another medical marijuana dispensary facility, a medical marijuana testing facility, or a medical marijuana-infused products manufacturing facility.

**Medical Marijuana-infused Products Manufacturing Facility** means a facility licensed by the department to acquire, store, manufacture, transport, and sell marijuana-infused products to a medical marijuana dispensary facility, a medical marijuana testing facility, or to another medical marijuana-infused products manufacturing facility.

**Medical Marijuana Testing Facility** means a facility certified by the department to acquire, test, certify, and transport marijuana.

**Medical Marijuana Transportation Facility** as defined by 19 CSR 30-95.100 as a facility licensed to transport medical marijuana from an originating facility to a destination facility within twenty-four (24) hours that also meets the requirements for transportation facilities defined in 19 CSR 30-95.040.

**Section 2.** The following zoning districts shall be amended; C2-C3, AD, AD-2, and M-1, regulating Medical Marijuana Cultivation, Dispensary, Manufacturing, Testing, Transportation and related uses under the Special Use Process, Berkeley Code 400.530.

**Section 3.** The following zoning districts shall be amended; C2-C3, AD, AD-2, and M-1 under the Special Use Process, Berkeley Code 400.530 relating to buildings adding; Any building being used as a medical marijuana facility shall have a minimum floor area of one thousand (1,000) square feet.

**Section 4.** The following zoning districts shall be amended; C2-C3, AD, AD-2, and M-1 under the Special Use Process, Berkeley Code 400.530 relating to Distance Requirements as allowed through State of Missouri 19 CSR 30-95.040(4)(B), to amend the requirement of distance from one thousand (1,000) feet to the local government requirement, where the City of Berkeley code requires a three hundred (300) feet property distance by Section 600.210 (B). Therefore, the distance requirement will reflect three hundred (300) feet.

**Section 5.** The Annual License Fees shall be established under Section 605.090 as follows:

LICENSE TYPE	ANNUAL FEE
Medical Marijuana Cultivation Facility	\$ 5,000
Medical Marijuana Dispensary Facility	\$ 3,000
Medical Marijuana Manufacturing Facility	\$ 3,000
Medical Marijuana Testing Facility	\$ 5,000
Medical Marijuana Transportation Facility	\$ 5,000

**Section 6.** Appendix B, Land Use and Required Parking, of Chapter 400, Zoning, of the Berkeley Municipal Code is hereby amended as set forth and fully described in "Table A" below:

TABLE A						
Land Use	C-2	C-3	AD	AD-2	M-1	Minimum Parking
<ul style="list-style-type: none"> <li>• Cultivation: (Crops Grown Indoors)</li> <li>• Manufacturing</li> <li>• Testing</li> <li>• Transportation</li> </ul>	N/A	N/A	SUP	SUP	SUP	Section 400.160 (g)
Medical Marijuana Dispensary	SUP	SUP	SUP	SUP	SUP	1 space per 200 sf. of floor area devoted to retail use

**Section 7.** This Ordinance shall be in full force and effect from and after its passage and approval.

1st Reading, this \_\_\_\_\_

2nd Reading this \_\_\_\_\_

3rd Reading, PASSED and APPROVED, this \_\_\_\_\_

\_\_\_\_\_  
Theodore Hoskins, Mayor

ATTEST:

Final Roll Call:

\_\_\_\_\_  
Deanna L. Jones, City Clerk

\_\_\_\_\_  
Approved As To Form:  
Donnell Smith, City Attorney

Mayor Hoskins	Aye	___	Nay	__	Absent	__	Abstain	__
Councilwoman Hoskins	Aye	___	Nay	__	Absent	__	Abstain	__
Councilwoman Mitchell	Aye	___	Nay	__	Absent	__	Abstain	__
Councilwoman Williams	Aye	___	Nay	__	Absent	__	Abstain	__
Councilman-at-Large Greene	Aye	___	Nay	__	Absent	__	Abstain	__
Councilman Hindeleh	Aye	___	Nay	__	Absent	__	Abstain	__
Councilwoman Anthony	Aye	___	Nay	__	Absent	__	Abstain	__



does not exceed three-tenths of one percent (0.3%) on a dry weight basis, or commodities or products manufactured from industrial hemp.

(21) "Marijuana-Infused Products" means products that are infused with marijuana or an extract thereof and are intended for use or consumption other than by smoking, including, but not limited to, edible products, ointments, tinctures, and concentrates.

(22) "Medical Marijuana Cultivation Facility" means a facility licensed by the department, to acquire, cultivate, process, store, transport, and sell marijuana to a medical marijuana dispensary facility, medical marijuana testing facility, or to a medical marijuana-infused products manufacturing facility.

(23) "Medical Marijuana Dispensary Facility" means a facility licensed by the department, to acquire, store, sell, transport, and deliver marijuana, marijuana-infused products, and drug paraphernalia used to administer marijuana as provided for in this section to a qualifying patient, a primary caregiver, another medical marijuana dispensary facility, a medical marijuana testing facility, or a medical marijuana-infused products manufacturing facility.

(24) "Medical Marijuana-Infused Products Manufacturing Facility" means a facility licensed by the department, to acquire, store, manufacture, transport, and sell marijuana-infused products to a medical marijuana dispensary facility, a medical marijuana testing facility, or to another medical marijuana-infused products manufacturing facility.

(25) "Medical Marijuana Testing Facility" means a facility certified by the department to acquire, test, certify, and transport marijuana.

(26) "Medical Marijuana Transportation Facility" means 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.

(27) "Medical use" means the production, possession, delivery, distribution, transportation, or administration of marijuana or a marijuana-infused product, or drug paraphernalia used to administer marijuana or a marijuana-infused product, for the benefit of a qualifying patient to mitigate the symptoms or

effects of the patient's qualifying medical condition.

(28) "Non-emancipated qualifying patient" means a qualifying patient under the age of eighteen (18) who has not been emancipated under Missouri law.

(29) "Physician" means an individual who is licensed and in good standing to practice medicine or osteopathy under Missouri law.

(A) A license is in good standing if it is registered with the Missouri Board of Healing Arts as current, active, and not restricted in any way, such as by designation as temporary or limited.

(B) Practice of medicine or osteopathy means practice by persons who hold a physician and surgeon license pursuant to Chapter 334, RSMo, including those who are admitted to practice in Missouri by reciprocity pursuant to 334.043, RSMo.

(30) "Physician certification" means a document, whether handwritten, electronic or in another commonly used format, signed by a physician and stating that, in the physician's professional opinion, the patient suffers from a qualifying medical condition.

(31) "Primary caregiver" means an individual twenty-one (21) 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.

(32) "Principal officers or managers" means persons who, regardless of title, have responsibility for supervising the management, administration, or operation of an entity, including, but not limited to: presidents, vice presidents, or general counsels; chief executive, financial, or operating officers; general partners, managing partners, or controlling partners; managing-members; or trustees.

(33) "Process lot" means, once production is complete, any amount of medical marijuana concentrate or extract of the same type and processed using the same extraction methods, standard operating procedures, and harvest lots; or any amount of medical marijuana infused product of the same type and processed using the same ingredients, standard operating procedures, and harvest lots.

(34) "Public place" means 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 non-public 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.

(35) "Qualifying medical condition" means 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, post-traumatic 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,