

## **AMENDING SECTIONS 101-102, 117-101, AND 117-99 OF THE NIXA CITY CODE TO ACCOMMODATE THE STATE'S APPROVAL OF ADULT USE MARIJUANA.**

### **Background:**

On November 8, 2022, the voters of Missouri approved Constitutional Amendment 3. The provisions of Amendment 3 modified the Missouri Constitution to authorize the adult use of marijuana in the state.

The provisions of Amendment 3 became effective on December 8, 2022, and as of February 6, 2023, marijuana may be legally sold in Missouri.

### **Analysis:**

With it being possible for marijuana to be purchased legally in the State, the City needs to update its land use regulations to account for new land uses which may occur within the City.

The amendments proposed by staff are broken down into three sections.

#### 1.) Definition changes.

Section 1 and 2 of the proposed Ordinance contain the proposed additions, deletions, and modifications to the definitions found in Section 101-2. Section 101-2 functions as the definition section for the City's zoning ordinance.

With the approval of Amendment 3, new comprehensive marijuana uses have been established. The intent and purpose of the changes to Section 101-2 is to place these new potential land uses into the zoning ordinance using substantially similar definitions as those found in the Constitution.

Additionally, Amendment 3 modified several definitions applicable to medical marijuana facilities. Staff's proposed amendments also reflect these changes.

#### 2.) Regulatory changes.

Section 3 of the proposed Ordinance details staff's proposed modifications to Section 117-101. This Section contains the specific use regulations applicable to marijuana uses in the City.

Staff's proposed amendments to this Section primarily focus on changes to how distance between a new marijuana use and schools, day cares, and churches are measured. The provisions of Amendment 3 detail, specifically, how distance is to be measured. To ensure compliance with the Constitution, staff is proposing that the language used by the Constitution is used in the City's regulations also.

Importantly, staff is also recommending that a consistent 1000-foot separation distance be established between a marijuana use and a school, day care, or church.

### 3.) Zoning district changes.

Finally, Section 4 of the proposed Ordinance contains staff's proposed edits to Section 117-99, otherwise known as the table of approved uses. Because Amendment 3 established new potential land uses, this section needs to be amended so that it is clear where these land uses may be allowed within the City.

The drafting intent with this section was to keep the new comprehensive uses in the same districts as the equivalent medical marijuana use.

### **Recommendation:**

Staff's proposed amendments are intended to add language to the City's zoning provisions to address the new land uses authorized by the adoption of Constitutional Amendment 3. The drafting intent with these amendments is to place language used in Amendment 3 into the City's zoning ordinance so that the zoning ordinance has language to address these new land uses.

The Planning and Zoning Commission considered these amendments at their February 6, 2023, regular meeting. The Commission recommended approval of the amendments.

Based on the foregoing, Staff recommends approval of the proposed Amendments.

MEMO SUBMITTED BY:

Nick Woodman | City Attorney

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING SECTIONS 101-102, 117-101, AND 117-99 OF THE NIXA CITY CODE TO ACCOMMODATE THE STATE’S APPROVAL OF ADULT USE MARIJUANA.**

**WHEREAS** on November 8, 2022, the voters of Missouri approved Constitutional Amendment 3; and

**WHEREAS** said Amendment modified the Missouri Constitution to authorize the use of marijuana by those 21 or older; and

**WHEREAS** with the adoption and implementation of Amendment 3 it is now possible to purchase recreational marijuana in the State of Missouri; and

**WHEREAS** the City’s current land use regulations do not account for the new potential land uses which may occur with the adoption of Amendment 3; and

**WHEREAS** this Council Bill, if approved, would add language to the Nixa City Code to address the new land uses authorized by Amendment 3; and

**WHEREAS** the Planning and Zoning Commission held a public hearing to consider the amendments contained herein at their February 6, 2023, regular meeting; and

**WHEREAS** after said public hearing, the Commission recommended approval of said amendments; and

**WHEREAS** the City Council desires to adopt the amendments contained herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:**

**SECTION 1:** Chapter 101, Article I, Section 101-2 of the Nixa City Code is hereby amended as set forth herein:

(Note: Language to be added is indicated by being underlined. Language to be removed is indicated by being ~~stricken~~.)

Comprehensive marijuana cultivation facility means a facility licensed by the State as a comprehensive marijuana cultivation facility and which acquires, cultivates, processes, packages, stores on site or off site, transports to or from, and sells marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones) to a medical facility, comprehensive marijuana facility, or marijuana testing facility. A comprehensive marijuana cultivation facility need not segregate or account for its marijuana products as either non-medical marijuana or medical marijuana. A comprehensive marijuana cultivation facility’s authority to process marijuana shall include the creation of prerolls, but shall not include the manufacture of marijuana-infused products.

47  
48 Comprehensive marijuana dispensary facility means a facility licensed by the State  
49 as a comprehensive marijuana dispensary facility and which acquires, processes,  
50 packages, stores on site or off site, sell, transports to or from, and delivers marijuana,  
51 marijuana seeds, marijuana vegetative cuttings (also known as clones), marijuana-  
52 infused products, and drug paraphernalia used to administer marijuana as provided for in  
53 Article XIV of the Missouri Constitution to a qualifying patient or primary caregiver, as  
54 those terms are defined in said Article, or to a consumer, anywhere on the licensed  
55 property or to any address as directed by the patient, primary caregiver, or consumer and  
56 consistent with the limitations of Article XIV of the Missouri Constitution, and as otherwise  
57 allowed by law, to a comprehensive facility, a marijuana testing facility, or a medical  
58 facility. Comprehensive dispensary facilities may receive transaction orders at the  
59 dispensary directly from the consumer in person, by phone, or via the Internet, including  
60 from a third party. A comprehensive marijuana dispensary facility need not segregate or  
61 account for its marijuana products as either non-medical marijuana or medical marijuana,  
62 but shall collect all appropriate tangible personal property sales tax for each sale, as  
63 provided for by general or local law. A comprehensive marijuana dispensary facilities  
64 authority to process marijuana shall include the creation of prerolls.

65  
66 Comprehensive marijuana-infused products manufacturing facility means a facility  
67 licensed by the State as a comprehensive marijuana-infused products manufacturing  
68 facility and which acquires, processes, packages, stores, manufactures, transports to or  
69 from a medical facility, comprehensive facility, or marijuana testing facility, and sells  
70 marijuana-infused products, prerolls, and infused prerolls to a marijuana dispensary  
71 facility, a marijuana testing facility, or another marijuana-infused products manufacturing  
72 facility. A comprehensive marijuana-infused products manufacturing facility need not  
73 segregate or account for its marijuana products as either non-medical marijuana or  
74 medical marijuana.

75  
76 Marijuana or Marihuana means Cannabis indica, Cannabis sativa, and/or  
77 Cannabis ruderalis, hybrids of such species, and any other strains commonly understood  
78 within the scientific community to constitute marijuana, as well as resin extracted from the  
79 marijuana plant and marijuana-infused products. "Marijuana" or "Marihuana" does not  
80 include industrial hemp, ~~as defined by Missouri statute containing a crop-wide average~~  
81 ~~tetrahydrocannabinol concentration that does not exceed three-tenths of one percent on~~  
82 ~~a dry weight basis, or commodities or products manufactured from industrial hemp.~~

83  
84 Marijuana medical facility means any medical marijuana cultivation facility, medical  
85 marijuana dispensary facility, or medical marijuana-infused products manufacturing  
86 facility.

87  
88 Marijuana testing facility means a facility certified by the State to acquire, test,  
89 certify, and transport marijuana, including those originally certified as a medical marijuana  
90 testing facility.

91  
92 Marijuana use means a marijuana medical facility and a marijuana facility.

93

94 *Medical marijuana cultivation facility* means a facility licensed by the State as a  
95 medical marijuana cultivation facility and which, to acquires, cultivates, processes,  
96 packages, stores on site of off site, transports to or from, and sells marijuana, marijuana  
97 seeds, and marijuana vegetative cuttings (also known as clones) to a medical marijuana  
98 dispensary facility, medical marijuana testing facility, medical marijuana cultivation facility,  
99 or to a medical marijuana-infused products manufacturing facility. A medical marijuana  
100 cultivation facility's authority to process marijuana shall include the production and sale  
101 of prerolls, but shall not include the manufacture of marijuana-infused products.

102

103 *Medical marijuana dispensary facility* means a facility licensed by the State as a  
104 medical marijuana dispensary facility and which to acquires, processes, packages, stores  
105 on site or off site, sells, transports to or from, and delivers marijuana, marijuana seeds,  
106 marijuana vegetative cuttings (also known as clones), marijuana-infused products, and  
107 drug paraphernalia used to administer marijuana as provided for in Article XIV of the  
108 Missouri Constitution this section to a qualifying patient, a primary caregiver, anywhere  
109 on the licensed property or to any address as directed by the patient or primary caregiver,  
110 so long as the address is a location allowing for the legal possession of marijuana, another  
111 medical marijuana dispensary facility, a medical marijuana testing facility, a medical  
112 marijuana cultivation facility, or a medical marijuana-infused products manufacturing  
113 facility. Dispensary facilities may receive transaction orders at the dispensary in person,  
114 by phone, or via the internet, including from a third party. A medical marijuana dispensary  
115 facility's authority to process marijuana shall include the production and sale of prerolls,  
116 but shall not include the manufacture of marijuana-infused products.

117

118 *Medical marijuana-infused products manufacturing facility* means a facility  
119 licensed by the State as a medical marijuana-infused products manufacturing facility and  
120 which to acquires, processes, packages, stores on site or off site, manufactures,  
121 transports to or from, and sells marijuana-infused products to a medical marijuana  
122 dispensary facility, a medical marijuana testing facility, or to another medical marijuana-  
123 infused products manufacturing facility.

124

125 ~~*Medical marijuana testing facility* means a facility certified by the State to acquire,~~  
126 ~~test, certify, and transport marijuana.~~

127

128 *Microbusiness dispensary facility* means a facility licensed by the State as a  
129 microbusiness dispensary facility and which acquires, processes, packages, stores on  
130 site or off site, sells, transports to or from, and delivers marijuana, marijuana seeds,  
131 marijuana vegetative cuttings (also known as clones), marijuana-infused products, and  
132 drug paraphernalia used to administer marijuana as provided for in Article XIV of the  
133 Missouri Constitution a consumer, qualifying patient, as that term is defined in Article XIV,  
134 Section 1, of the Missouri Constitution, or primary caregiver, as that term is defined in  
135 Article XIV, Section 1, of the Missouri Constitution, anywhere on the licensed property or  
136 to any address as directed by the consumer, qualifying patient, or primary caregiver and,  
137 consistent with the limitations of Article XIV of the Missouri Constitution and is otherwise  
138 allowed by law, a microbusiness wholesale facility, or a marijuana testing facility.

139 Microbusiness dispensary facilities may receive transaction orders at the dispensary  
140 directly from the consumer in person, by phone, or via the Internet including from a third  
141 party. A microbusiness dispensary facilities authority to process marijuana shall include  
142 the creation of prerolls.

143  
144 Microbusiness wholesale facility means a facility licensed by the State as a  
145 microbusiness wholesale facility and which acquires, cultivates, processes, packages,  
146 stores on site or off site, manufactures, transports to or from, delivers, and sells marijuana,  
147 marijuana seeds, marijuana vegetative cuttings (also known as clones), and marijuana  
148 infused products to a microbusiness dispensary facility, other microbusiness wholesale  
149 facility, or marijuana testing facility. A micro business wholesale facility may cultivate up  
150 to 250 flowering marijuana plants at any given time period a microbusiness wholesale  
151 facility’s authority to process marijuana shall include the creation of prerolls and infused  
152 prerolls.

153  
154 **SECTION 2:** Aside from the additions and removals of the language contained in  
155 Section 1 of this Ordinance, all other portions of Section 101-2 of the Nixa City Code shall  
156 remain unmodified. The language added to Section 101-2 by Section of this Ordinance  
157 shall be added so that definitions contained in said Section are organized in alphabetical  
158 order.

159  
160 **SECTION 3:** Chapter 117, Article IV, Section 117-101 of the Nixa City Code is  
161 hereby amended by repealing Section 117-101 in its entirety and adopting in lieu thereof  
162 a new section 117-101, which said section shall read as follows:

163  
164 (Note: Language to be added is indicated by being underlined. Language to be removed  
165 is indicated by being ~~stricken~~.)

166  
167 Sec. 117-101. Marijuana related uses.

168  
169 (a) No building shall be constructed, altered or used for a marijuana use medical  
170 marijuana dispensary, a medical marijuana cultivation facility, a marijuana infused  
171 products manufacturing facility, or medical marijuana testing facility without  
172 complying with the following use regulations of this Section.

173  
174 (1) No marijuana use medical marijuana dispensary, medical marijuana cultivation  
175 facility, medical marijuana infused products manufacturing facility, or medical  
176 marijuana testing facility shall be located within the following: 1,000 feet of any  
177 existing school, day care, or church elementary or secondary school; 500 feet  
178 of any licensed Child Day Care Facility, or 250 feet of any Church. The  
179 determination of distance will be made at the time of initial siting. For purposes  
180 of this provision, distance shall be determined as follows:

181  
182 a.i. In the case of a freestanding facility, the distance between the facility and  
183 the school, day care, or church shall be measured from the external wall  
184 of the facility structured closest in proximity to the school, daycare, or

185 church to the closest point of the property line of the school, day care, or  
186 church, in a straight line, without regard to intervening structures, from the  
187 property line of the facility to the nearest point on the exterior building wall  
188 of the school, child care center, or church.

189  
190 b.ii. In the case of a facility that is part of a larger structure, such as an office  
191 building or strip mall, the distance between the facility and the school, day  
192 care, or church shall be measured from the property line of the school,  
193 day care, or church to the facility's entrance or exit closest in proximity to  
194 the school, day care, or church, in a straight line, without regard to  
195 intervening structures, from the facility's entrance or exit closet in proximity  
196 to the school, child day care center, or church to the nearest point on the  
197 exterior building wall of the school, child care center, or church.

198  
199 c. If the school, day care, or church is part of a larger structure, such as an  
200 office building or strip mall, the distance shall be measured to the entrance  
201 or exit of the school, day care, or church closest in proximity to the facility.

202  
203 d. Measurements shall be made along the shortest path between the  
204 demarcation points that can be lawfully traveled.

205  
206 (2) Outdoor operations or storage prohibited: All operations and all storage of  
207 materials, products, or equipment shall be within a fully enclosed building. No  
208 outdoor operations or storage shall be permitted.

209  
210 (3) Onsite usage prohibited: No marijuana may be smoked, ingested, or otherwise  
211 consumed on the premises unless authorized by state law and necessary for  
212 the purposes of operating a marijuana testing facility or a marijuana-infused  
213 products manufacturing facility.

214  
215 (4) Display of licenses required: A current ~~medical~~ marijuana license issued by the  
216 State of Missouri and a City of Nixa Business License shall be displayed in an  
217 open and conspicuous place on the premises.

218  
219 ~~(5) Residential dwelling units prohibited: No facility shall be located in a building~~  
220 ~~that contains a residence.~~

221  
222 ~~(5)~~(6) Ventilation required: All facilities shall install and operate a ventilation  
223 system that will prevent any odor of marijuana from leaving the premises of the  
224 business. No odors shall be detectable by a person with a normal sense of  
225 smell outside the boundary of the parcel on which the facility is located.

226  
227 (6) The specific marijuana use must be a permitted use for the property as  
228 provided in Section 117-99 of the Nixa City Code.

229

230 (b) Definitions. Notwithstanding any other provisions of the Nixa City Code to the  
231 contrary, for the purposes of this Section, the following words, terms, and phrases  
232 shall have the meaning ascribed to them:

233  
234 Church means a permanent building primarily and regularly used as a place of  
235 religious worship.

236  
237 Day care means a child-care facility, as defined by section 210.201 RSMo., or  
238 successor provisions, which is licensed with the state of Missouri.

239  
240 School means an elementary or secondary school.

241  
242 (c) The intent of this Section is to implement the provisions of Article XIV Section 1 and  
243 2 of the Missouri Constitution. Therefore, the provisions of this Section, and the  
244 applicable definitions contained in Section 101-2 of the Nixa City Code, shall be  
245 interpreted, and enforced with reference to said Article.

246  
247 **SECTION 4:** Chapter 117, Article IV, Section 117-99 of the Nixa City Code is  
248 hereby amended as set forth herein:

249  
250 (1) The following use description is removed from the zoning district ascribed to them:

251  
252 a. Medical marijuana testing facility (indoor only) – M-1 and M-2 zoning districts.

253  
254 (2) The following use descriptions are added as permitted uses to the zoning districts  
255 ascribed to them:

256  
257 a. Comprehensive marijuana cultivation facility (indoor only) – M-1 and M-2  
258 zoning districts.

259  
260 b. Comprehensive marijuana dispensary facility – CC, NC, O, GC, and HC zoning  
261 districts.

262  
263 c. Comprehensive marijuana-infused products manufacturing facility (Indoor only)  
264 – M-1 and M-2 zoning districts.

265  
266 d. Microbusiness dispensary facility – CC, NC, O, GC, and HC zoning districts.

267  
268 e. Microbusiness wholesale facility – M-1 and M-2 zoning districts.

269  
270 Aside from the additions and removals of the above described uses from the above-  
271 described districts, all other portions of Section 117-99 of the Nixa City Code shall remain  
272 unmodified.

273  
274 **SECTION 5:** Savings Clause. Nothing in this Ordinance shall be construed to  
275 affect any suit or proceeding now pending in any court or any rights acquired, or liability



276 incurred nor any cause or causes of action occurred or existing, under any act or  
277 ordinance repealed hereby.

278  
279 **SECTION 6:** Severability Clause. If any section, subsection, sentence, clause, or  
280 phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect  
281 the validity of the remaining portions of this Ordinance. The Council hereby declares that  
282 it would have adopted the Ordinance and each section, subsection, sentence, clause, or  
283 phrase thereof, irrespective of the fact that any one or more sections, subsections,  
284 sentences, clauses, or phrases be declared invalid.

285  
286 **SECTION 7:** This Ordinance shall be in full force and effect from and after its final  
287 passage by the City Council and after its approval by the Mayor, subject to the provisions  
288 of section 3.11(g) of the City Charter.

289

290

291 **ADOPTED BY THE COUNCIL THIS 27<sup>th</sup> DAY OF February 2023.**

292

293 ATTEST:

294

295 \_\_\_\_\_

296 PRESIDING OFFICER CITY CLERK

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298

299 **APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.**

300

301 ATTEST:

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303 \_\_\_\_\_

304 MAYOR CITY CLERK

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306

307 APPROVED AS TO FORM:

308

309 \_\_\_\_\_

310 CITY ATTORNEY