

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 8th DAY OF March 2023.**

292
293 ATTEST:
294
295 _____
296 PRESIDING OFFICER CITY CLERK

297
298
299 **APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2023.**

300
301 ATTEST:
302
303 _____
304 MAYOR CITY CLERK

305
306 APPROVED AS TO FORM:

307
308
309 _____
310 CITY ATTORNEY