

## **AMENDING SEVERAL SECTIONS OF CHAPTER 101 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 amend 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 the earliest that marijuana may be legally sold in Missouri is February 6, 2023.

### **Analysis:**

With it being possible for marijuana to be purchased legally in the State in the near future, 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. The text containing the proposed amendments are included in Attachment 1.

#### 1.) Definition changes.

Section 1 of Attachment 1 contains 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 2 of Attachment 1 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 3 of Attachment 1 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, as detailed in Attachment 1, 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.

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

MEMO SUBMITTED BY:

Nick Woodman | City Attorney

### Attachments:

**Attachment 1** – Proposed Amendments.

## ATTACHMENT 1

### Section 1 – Amendments to Section 101-2.

The following amendments are proposed for Section 101-2 of the Nixa City Code:

(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.

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

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

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

*Marijuana medical facility* means any medical marijuana cultivation facility, medical marijuana dispensary facility, or medical marijuana-infused products manufacturing facility.

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

*Marijuana use* means a marijuana medical facility and a marijuana facility.

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

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

*Medical marijuana-infused products manufacturing facility* means a facility licensed by the State as a medical marijuana-infused products manufacturing facility and which ~~to~~ acquires, processes, packages, stores on site or off site, manufactures, transports to or from, and sells 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 State to acquire, test, certify, and transport marijuana.~~

*Microbusiness dispensary facility* means a facility licensed by the State as a microbusiness dispensary facility and which acquires, processes, packages, stores on site or off site, sells, transports to or from, and delivers marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones), marijuana-infused products, and drug paraphernalia used to administer marijuana as provided for in Article XIV of the Missouri Constitution a consumer, qualifying patient, as that term is defined in Article XIV, Section 1, of the Missouri Constitution, or primary caregiver, as that term is defined in Article XIV, Section 1, of the Missouri Constitution, anywhere on the licensed property or to any address as directed by the consumer, qualifying patient, or primary caregiver and, consistent with the limitations of Article XIV of the Missouri Constitution and is otherwise allowed by law, a microbusiness wholesale facility, or a marijuana testing facility. Microbusiness dispensary facilities may receive transaction orders at the dispensary directly from the consumer in person, by phone, or via the Internet including from a third party. A microbusiness dispensary facilities authority to process marijuana shall include the creation of prerolls.

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

## *Section 2 – Amendments to Section 117-101.*

The following amendments are proposed for Section 117-101 of the Nixa City Code:

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

Sec. 117-101. Marijuana related uses.

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

- (1) ~~No marijuana use medical marijuana dispensary, medical marijuana cultivation facility, medical marijuana-infused products manufacturing facility, or medical marijuana testing facility shall be located within the following: 1,000 feet of any existing school, day care, or church elementary or secondary school; 500 feet of any licensed Child Day Care Facility, or 250 feet of any Church. The determination of distance will be made at the time of initial siting. For purposes of this provision, distance shall be determined as follows:~~
- ~~a.i. In the case of a freestanding facility, the distance between the facility and the school, day care, or church shall be measured from the external wall of the facility structured closest in proximity to the school, daycare, or church to the closest point of the property line of the school, day care, or church. in a straight line, without regard to intervening structures, from the property line of the facility to the nearest point on the exterior building wall of the school, child care center, or church.~~
  - ~~b.ii. In the case of a facility that is part of a larger structure, such as an office building or strip mall, the distance between the facility and the school, day care, or church shall be measured from the property line of the school, day care, or church to the facility's entrance or exit closest in proximity to the school, day care, or church. in a straight line, without regard to intervening structures, from the facility's entrance or exit closet in proximity to the school, child day care center, or church to the nearest point on the exterior building wall of the school, child care center, or church.~~
  - ~~c. If the school, day care, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, day care, or church closest in proximity to the facility.~~
  - ~~d. Measurements shall be made along the shortest path between the demarcation points that can be lawfully traveled.~~
- (2) Outdoor operations or storage prohibited: All operations and all storage of materials, products, or equipment shall be within a fully enclosed building. No outdoor operations or storage shall be permitted.
- (3) Onsite usage prohibited: No marijuana may be smoked, ingested, or otherwise consumed on the premises unless authorized by state law and necessary for the purposes of operating a marijuana testing facility or a marijuana-infused products manufacturing facility.
- (4) Display of licenses required: A current ~~medical~~ marijuana license issued by the State of Missouri and a City of Nixa Business License shall be displayed in an open and conspicuous place on the premises.

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

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

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

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

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

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

School means an elementary or secondary school.

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

### *Section 3 – Amendments to Section 117-99 (Table of Approved Uses).*

The following use description is removed from Section 117-99:

Medical Marijuana Testing Facility (indoor only) – M-1, M-2

The following use descriptions are added to Section 117-99 and are added as permitted uses to the zoning districts ascribed to them:

Comprehensive marijuana cultivation facility (indoor only) – M-1, M-2

Comprehensive marijuana dispensary facility – CC, NC, O, GC, HC

Comprehensive marijuana-infused products manufacturing facility (Indoor only) – M-1, M-2

Marijuana testing facility (indoor only) – M-1, M-2

Microbusiness dispensary facility – CC, NC, O, GC, HC

Microbusiness wholesale facility – M-1, M-2