

**STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT****PLN-ZOTA-24-00002: REGULATION OF MEDICINAL CANNABIS BUSINESSES**

INITIATED BY: URBAN COUNTY PLANNING COMMISSION

PROPOSED TEXT: See attachment: Text underlined indicates an addition to the existing Zoning Ordinance; text ~~stricken through~~ indicates a deletion.)

STAFF REVIEW:

On March 14, 2024 the Urban County Planning Commission initiated a text amendment to the Zoning Ordinance in order to regulate medicinal cannabis businesses as a response to the adoption of HB 47 during the 2023 legislative session by the Kentucky General Assembly. The text amendment includes definitions from KRS 218B, and establishing principal, accessory, conditional and prohibited uses in Articles 8 and 23 for the five types of medicinal cannabis businesses: cultivators, processors, producers, safety compliance facilities and dispensaries.

In 2023, HB 47 became law, with an effective date of January 1, 2025. HB 47 created KRS 218B in order to allow medicinal cannabis to be used to treat a limited number of qualifying medical conditions and for registered cardholders to legally access the medicinal cannabis in Kentucky (cannabis continues to be regulated as a controlled substance by federal regulation, thus all activities must be completed within the state). In order to reach the ultimate goal of providing medicinal cannabis to registered cardholders, an entire system of business are necessary from growing, to processing, to testing and lastly, to distribution at a dispensary. The newly created state regulations regarding medicinal cannabis businesses establish how cultivators, processors, producers, safety compliance facilities, and dispensaries will apply, become licensed, and operate in the Commonwealth. In addition, regulations regarding patients, designated caregivers, and practitioners establish the procedures to receive a written certification and a medical cannabis card, supply limits, and procedures to publish a list of varieties of medical cannabis. All of these businesses will be licensed and regulated by the Cabinet for Health and Family Services, and the newly established Kentucky Medical Cannabis Program. In addition, KRS 218B allows for local jurisdictions to establish zoning regulations to limit the "time, place and manner" of such businesses.

During the 2024 legislative session, the Kentucky General Assembly amended the new regulations in relatively minor way, but did allow for the businesses to start their setup as soon as July 1, 2024 in order to fulfill the goal of being operational on January 1, 2025 (HB 829). This 6 month setup window will allow the new businesses to make applications to the state Medical Cannabis Program and become licensed prior to 2025. In establishing the Medical Cannabis Program, the state also has limited the number of initial dispensary licenses and distributed them across the state in 11 regions (Region 1 (Bluegrass) includes Fayette County and the surrounding 12 counties). The Medical Cannabis Program established the regions in order to distribute the dispensaries across the state and to reduce the transportation time for patients and cardholders. Each of the 11 regions will be allowed to have no more than four dispensary licenses, with the exception of the regions



encompassing Louisville and Lexington, which can have up to six. In addition, Jefferson and Fayette Counties will each be allocated two dispensary licenses during the initial license allocation.

The state regulations do provide some restrictions that relate to land use. First, any cultivator or producer must establish an indoor growing space that is equipped with locks and other security devices that permit access only by authorized agents of the business. This provision limits access to the growth area inside a condensed facility. Structures can be larger than the growth area to include offices, maintenance/mechanical, storage, and other non-cultivation activities. Second, medical cannabis business shall not be located within 1,000 feet of an elementary or secondary school or a daycare center. This restriction guides the location of such businesses, which are present in Fayette County in all zones and distributed throughout the community.

REGULATORY APPROACH

After thorough review of the adopted state regulations, the Staff recommended amending the Zoning Ordinance to specifically address the new businesses for clarity and to reduce possible challenges to any interpretations. The new business uses are unique enough that they did not fall into broader definitions or categories in a clean manner. The text amendment defines the following terms consistent with the current state regulations: medicinal cannabis, cannabis business, medicinal cannabis cultivator (including the square footage distinctions for the four tiers), medicinal cannabis dispensary, medicinal cannabis processor, medicinal cannabis producer, medicinal cannabis safety compliance facility, medicinal cannabis product, and cardholder. Lastly, the amendment clarifies the existing definition of commercial greenhouse, stating that a medicinal cannabis cultivator, processor and processor are distinction not commercial greenhouses and are regulated more specifically by the Zoning Ordinance.

The cultivation and growing of medicinal cannabis is generally an agricultural use; therefore, the proposed text amendment allows a medicinal cannabis cultivator of up to 10,000 square feet of growth area as an accessory use “in connection with agriculture” within the agricultural zones and is not intended to be allowed on a tract of land that is not used for agricultural purposes first and foremost. At this scale, the medicinal cannabis cultivator use would be subordinate to a typical agricultural use. The tier III and tier IV medicinal cannabis cultivators would require larger structures for the propagation of the plants, potentially more employees and more traffic; thus, a medicinal cannabis cultivator of more than 10,000 square feet of growth area would only be allowed with Board of Adjustment approval as a conditional use within the agricultural zones.

The proposed text amendment further would allow the cultivation and processing of medical cannabis, especially within a larger scale facility, within the industrial zones (I-1, I-2 and ED). This includes those combined facilities, termed producers by the state regulations.

A safety compliance facility ensures that the medicinal cannabis meets the state regulations for health and safety purposes, and is most closely aligned with laboratories, research and production, or office uses. Therefore, the proposed text amendment allows a medicinal cannabis safety compliance facility as a permitted use in the professional office, highway service and warehouse business zones and the industrial zones.

Lastly, medicinal cannabis dispensaries are the establishments that distribute or dispense the actual cannabis to registered cardholders. By state definition, dispensaries are allowed to also sell or supply medicinal cannabis accessories and educational materials, and cannot be co-located with a typical



pharmacy or any other medicinal cannabis business. This use most closely aligns with retail sale of pharmaceuticals and medical supplies; therefore, the proposed text amendment would allow dispensaries in the same zones that generally permit retail sales of other products (B-1, B-2, B-2A, B-6P, CC, MU-1, MU-2, and MU-3 zones). To clarify, the Staff recommends that dispensaries be listed as a prohibited use in the ED zone, even as a supportive use, based on the primary intent of the zone.

In order to assure such uses are not permitted within the residential zones, the proposed text lists medicinal cannabis businesses of all types as prohibited uses in the R-1A zone, which carries forward to all other residential zones (unless permitted herein by the Ordinance). To be clear, the staff recommends specifically listing medicinal cannabis businesses as prohibited uses in the R-4 and R-5 zones so that they cannot be interpreted as potential conditional uses in the future.

For clarification, the regulations established for medicinal cannabis do not make non-medical use permitted. Additional text amendments would be necessary to define and regulate such a use in Fayette County if the state regulations ever were changed. The Staff did consult with the Rural Land Management Board regarding the proposed regulations in April 2024. The RLMB supplied a letter of general support, but expressed concern about the potential for dispensaries in the Rural Service Area, about the size of any medicinal cannabis cultivator structures in the agricultural zones, with the most emphasis on the A-R zone, which is the primary zone within the Rural Service Area, and the potential for a cultivator to be accessory to a single family home in one of the rural subdivisions. The text does list the tier I and tier II cultivators as an accessory use in the agricultural zones as part of a list that begins with the phrase “accessory uses in connection with agriculture” which should address the last concern.

CONCLUSION

The proposed Zoning Ordinance updates will ensure clear regulation of the new businesses now possible due to the adoption of KRS 218B by the Kentucky General Assembly in 2023. The regulations treat the new agricultural and business uses in a consistent manner to other such uses in the Zoning Ordinance.

The Staff Recommends: Approval of the Staff Alternative Text, for the following reason:

1. The proposed Zoning Ordinance updates will ensure clear definition and regulation of the new medicinal cannabis businesses now possible due to the adoption of KRS 218B by the Kentucky General Assembly in 2023. The proposed text amendment will categorize the new agricultural and business uses in a consistent manner to other such uses in the Zoning Ordinance.

TLW/DAC
5/1/2024

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Article 1 - GENERAL PROVISIONS AND DEFINITIONS

Sec. 1-11. - Definitions.

Medicinal cannabis means marijuana as defined in KRS 218A.010 when cultivated, harvested, processed, produced, transported, dispensed, distributed, sold, possessed, or used in accordance with KRS 218B. This definition includes medicinal cannabis products and raw plant material; but does not include industrial hemp or industrial hemp products as defined in KRS 260.850.

Cannabis business means an entity licensed under KRS 218B as a cultivator, dispensary, processor, producer, or safety compliance facility. Such licensed cannabis businesses shall not be located within one thousand (1,000) feet of an existing elementary or secondary school or a daycare center.

Medicinal cannabis cultivator means a business that is licensed to grow medicinal cannabis in compliance with KRS 218B, more specifically to:

- (a) Acquire, possess, plant, cultivate, raise, harvest, trim, or store cannabis seeds, seedlings, plants, or raw plant material;
- (b) Deliver, transport, transfer, supply, or sell raw plant material or related supplies to other licensed cannabis businesses in this state; or
- (c) Sell cannabis seeds or seedlings to similar entities that are licensed to cultivate cannabis in this state or in any other jurisdiction.

Medicinal cannabis cultivators are regulated in four tiers by KRS 218B, as follows:

- (1) A Tier I cultivator shall not exceed an indoor growth area of two thousand five hundred (2,500) square feet.
- (2) A Tier II cultivator shall not exceed an indoor growth area of ten thousand (10,000) square feet.
- (3) A Tier III cultivator shall not exceed an indoor growth area of twenty-five thousand (25,000) square feet.
- (4) A Tier IV cultivator shall not exceed an indoor growth area of fifty thousand (50,000) square feet.

Medicinal cannabis dispensary means an establishment that is licensed in compliance with KRS 218B to:

- (a) Acquire or possess medicinal cannabis from a cultivator, processor, or producer in this state;
- (b) Acquire or possess medicinal cannabis accessories or educational material;
- (c) Supply, sell, dispense, distribute, or deliver medicinal cannabis, medicinal cannabis accessories, and educational material to cardholders or other dispensaries;
- (d) Sell cannabis seeds to similar entities that are licensed to cultivate cannabis in this state or in any other jurisdiction; or
- (e) Acquire, accept, or receive medicinal cannabis products from a cardholder pursuant to KRS 218B.110.

Medicinal cannabis processor means a business that is licensed in compliance with KRS 218B to:

- (a) Acquire or purchase raw plant material from a cultivator, processor, or producer in this state;
- (b) Possess, process, prepare, manufacture, manipulate, blend, or package medicinal cannabis;
- (c) Transfer, transport, supply, or sell medicinal cannabis and related supplies to other cannabis businesses in this state; or

(d) Sell cannabis seeds or seedlings to similar entities that are licensed to cultivate cannabis in this state or in any other jurisdiction.

Medicinal cannabis producer means a business that is licensed in compliance with KRS 218B to:

- (a) Acquire, possess, plant, cultivate, raise, harvest, trim, or store cannabis seeds, seedlings, plants, or raw plant material;
- (b) Deliver, transport, transfer, supply, or sell raw plant material, medicinal cannabis products, or related supplies to other licensed cannabis businesses in this state;
- (c) Sell cannabis seeds or seedlings to similar entities that are licensed to cultivate cannabis in this state or in any other jurisdiction;
- (d) Acquire or purchase raw plant material from a cultivator in this state; or
- (e) Possess, process, prepare, manufacture, manipulate, blend, or package medicinal cannabis.

Medicinal cannabis safety compliance facility means an establishment licensed in compliance with KRS 218B to:

- (1) Acquire or possess medicinal cannabis obtained from cardholders or cannabis businesses in this state;
- (2) Return the medicinal cannabis to cardholders or cannabis businesses in this state;
- (3) Transport medicinal cannabis that was produced by cannabis businesses in this state;
- (4) Produce or sell approved educational materials related to the use of medicinal cannabis;
- (5) Produce, sell, or transport of equipment or materials other than medicinal cannabis, including but not limited to lab equipment and packaging materials that are used by cannabis businesses and cardholders, to cardholders or cannabis businesses licensed under this chapter;
- (6) Test medicinal cannabis produced in this state;
- (7) Train cardholders and cannabis business agents;
- (8) Receive compensation for actions allowed under this section; and
- (9) Engage in any noncannabis-related business activities that are not otherwise prohibited or restricted by state law.

Medicinal cannabis product means any compound, manufacture, salt, derivative, mixture, or preparation of any part of the plant Cannabis sp., its seeds or its resin; or any compound, mixture, or preparation which contains any quantity of these substances when cultivated, harvested, processed, produced, transported, dispensed, distributed, sold, possessed, or used in accordance with KRS 218B. This definition does not include industrial hemp products as defined in KRS 260.850.

Cardholder means a registered qualified patient, designated caregiver, or visiting qualified patient who has applied for, obtained, and possesses a valid registry identification card issued by the Kentucky Cabinet for Health and Family Services for medicinal cannabis in compliance with KRS 218B; or a visiting qualified patient who has obtained and possesses (1) a valid out-of-state registry identification card, and (2) documentation of having been diagnosed with a qualifying medical condition.

Commercial greenhouse means an establishment primarily engaged in propagating and growing plants in containers, in soil or in other growing medium for the purpose of being sold and transplanted. The term "commercial greenhouse" shall include sale of the following items: plants grown on the premises or tended in a

controlled environment of the greenhouse or plant nursery; sale of fungicides, insecticides, chemicals, peat moss, humus, mulches, and fertilizer, all to be used in the soil or upon the live plant to preserve the life and health of the plants sold; landscape counseling, site planning and contracting services when not the primary activity and when using plants grown or tended on the premises of the greenhouse or plant nursery.

Note: The term "commercial greenhouse" applies only to land use as provided for in the zoning ordinance and subdivision regulations and is not intended to affect the status of any business with regard to any federal or state tax laws or similar statutes. A medicinal cannabis cultivator, producer and processor are more specifically defined and regulated, and are not a "commercial greenhouse."

Sec. 8-1. - Agricultural Rural (A-R) Zone.

(c) Accessory Uses. (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

1. Accessory uses in connection with agriculture, farming, dairying, stock raising or similar uses, such as agricultural structures; stables; [tier I and tier II medicinal cannabis cultivators](#); farm tours; hayrides; petting zoos; and parking areas, provided all yard requirements for a principal residence are met.

(d) Conditional Uses. (Permitted only with Board of Adjustment approval.)

[9. Tier III or Tier IV medicinal cannabis cultivators.](#)

For any of the following conditional uses established after January 26, 1995, a total of ten thousand (10,000) square feet shall be the maximum allowable for all structures proposed for such uses.

RENUMBER REMAINING SECTIONS

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

[28. Medicinal cannabis dispensaries, producers, processors, and safety compliance facilities.](#)

Sec. 8-2. - Agricultural Buffer (A-B) Zone.

(c) Accessory Uses. (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

1. Accessory uses in connection with agriculture, farming, dairying, stock raising or similar uses, such as agricultural structures; stables; [tier I and tier II medicinal cannabis cultivators](#); farm tours; hayrides; petting zoos; and parking areas, provided all yard requirements for a principal residence are met.

(d) Conditional Uses. (Permitted only with Board of Adjustment approval.)

[4. Tier III or Tier IV medicinal cannabis cultivators.](#)

For any of the following conditional uses established after January 26, 1995, except where the A-B zone is adjacent to the county boundary, and the property is a minimum of ten (10) acres, a total of 2% of the square footage of the property or ten thousand (10,000) square feet, whichever is greater, shall be the maximum allowable for all structures proposed for such uses:

RENUMBER REMAINING SECTIONS

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

[35. Medicinal cannabis dispensaries, producers, processors, and safety compliance facilities.](#)

Sec. 8-5. - Single-Family Residential (R-1A) Zone.

(e) Prohibited Uses. (All uses, other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory, or conditional uses, shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

1. Those uses prohibited in the A-U zone, except as permitted herein.
2. Commercial kennels, equine hospitals, and offices of veterinarians.
3. Any use dependent upon septic tanks or pit privies.
4. The above-ground or below-ground storage of any flammable material in gaseous form, including compressed natural gas, and the above- or below-ground storage of more than five (5) gallons of gasoline.
5. Ecotourism activities, except as permitted herein.
6. Zoological gardens.

[7. Medicinal cannabis businesses.](#)

Sec. 8-13. - Medium Density Residential (R-4) Zone.

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

1. The prohibited uses in the R-3 zone.
2. Equine trails.

[3. Medicinal cannabis businesses.](#)

Sec. 8-14. - High Density Residential (R-5) Zone.

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

1. The prohibited uses in the R-4 zone, except for offices, as permitted herein, extended-stay hotels, and incidental retail uses.
2. Outdoor commercial and non-commercial recreational facilities, such as zoological gardens, sportsmen's farms, riding stables and equine trails.

[3. Medicinal cannabis businesses.](#)

Sec. 8-15. - Professional Office (P-1) Zone.

(b) Principal Uses. (Other uses substantially similar to those listed herein shall also be deemed permitted.)

26. Medicinal cannabis safety compliance facilities.

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

9. Medicinal cannabis cultivators, dispensaries, producers and processors.

Sec. 8-16. - Neighborhood Business (B-1) Zone.

(b) Principal Uses. (Other uses substantially similar to those listed herein shall also be deemed permitted.)

49. Medicinal cannabis dispensaries.

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

23. Medicinal cannabis cultivators, processors, producers and safety compliance facilities.

Sec. 8-17. - Downtown Business (B-2) Zone.

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

8. Medicinal cannabis cultivators, processors, producers and safety compliance facilities.

Sec. 8-19. - Lexington Center Business (B-2B) Zone.

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

15. Medicinal cannabis businesses.

Sec. 8-20. - Highway Service Business (B-3) Zone.

(b) Principal Uses. (Other uses substantially similar to those listed herein shall also be deemed permitted.)

32. Medicinal cannabis dispensaries and safety compliance facilities.

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

12. Medicinal cannabis cultivators, processors, and producers.

Sec. 8-21. - Wholesale and Warehouse Business (B-4) Zone.

(b) Principal Uses. (Other uses substantially similar to those listed herein shall also be deemed permitted.)

28. Medicinal cannabis safety compliance facilities.

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

17. Medicinal cannabis cultivators, dispensaries, processors, and producers.

Sec. 8-22. - Light Industrial (I-1) Zone.

(b) Principal Uses. (Other uses substantially similar to those listed herein shall also be deemed permitted.)

9. Medicinal cannabis cultivators, processors, producers, and safety compliance facilities.

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

6. Medicinal cannabis dispensaries.

Sec. 8-23. - Heavy Industrial (I-2) Zone.

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

1. The prohibited uses in the B-4 zone, Sections 8-21(e)3 through 11 and Section 8-21(e)14 through ~~16~~17.

Sec. 8-24. - University Research Campus (P-2) Zone.

(e) Prohibited Uses. (All uses other than those listed as principal, accessory, or conditional uses, or substantially similar to principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses and are not intended to be a total listing of all the uses that are prohibited.)

9. Medicinal cannabis businesses.

APPENDIX 23A. ZONING CATEGORIES AND RESTRICTIONS

Sec. 23A-9. Community Center (CC) Zone.

(b) Principal Uses.

37. Medicinal cannabis dispensaries.

(e) Prohibited Uses.

25. Medicinal cannabis cultivators, producers, processors and safety compliance facilities.

Sec. 23A-10. Economic Development (ED) Zone.

(b) Principal Uses.

14. Medicinal cannabis cultivators, producers, processors, and safety compliance facilities.

15 ~~14~~. Supportive uses, as further regulated by section 23A-10(j).

- a. Adult day care centers.
- b. Automobile service stations, and automobile and vehicle refueling stations, including the accessory retail sale of convenience type merchandise.
- c. Banks, credit agencies, security and commodities brokers and exchanges credit institutions, savings and loan companies, holding and investment companies.
- d. Beauty shops and barber shops.
- e. Cable television system signal distribution centers and studios.
- f. Community centers and private clubs.
- g. Dwelling units, provided the units are not located on the first floor of a structure.
- h. Hotels and motels.
- i. Kennels, animal hospitals or clinics.
- j. Kindergartens, nursery schools and child care centers for four (4) or more children. A fenced and screened play area shall be provided, which shall contain not less than twenty-five (25) square feet per child.
- k. Libraries, museums, art galleries, and reading rooms.

- l. Multi-family dwellings and townhouses, three (3) or more units.
- m. Pharmacy and retail sale of medical equipment and supplies.
- h. Restaurants, with or without drive-through facilities.
- o. Studios for work or teaching of fine arts.
- p. Telephone exchanges, radio and television studios, including line of sight relay facilities.
- q. Television system signal distribution centers and studios, including line of sight relay facilities.
- r. Ticket and travel agencies.
- s. Shared parking court, as regulated by Article 16-5(b)(4), where depicted on a certified development plan.

(e) Prohibited Uses.

[4. Medicinal cannabis dispensaries.](#)

Note: [Blue text](#) indicates a change recommended by the staff alternative.