

CITY OF BRANSON WEST

AN ORDINANCE AMENDING CHAPTER IV OF THE REVISED CODE OF ORDINANCES OF BRANSON WEST, MISSOURI, TO INCLUDE USE AND ZONING REGULATIONS FOR MARIJUANA DISPENSING, CULTIVATION, AND MANUFACTURING FACILITIES

RECITALS:

1. In the November 2022 general election, Missouri voters adopted an amendment to Article XIV of the Missouri Constitution (Amendment 3) allowing for the possession, growing, dispensing, and taxation of marijuana and decriminalizes the use of marijuana by adults twenty-one years of age or older, as set out in the text of Amendment 3. In addition, Amendment 3 modified certain regulations and penalties relating to medical marijuana.
2. Amendment 3 also provides that, while a local government may not prohibit Non-Medical or Medical Marijuana or enact ordinances or adopt regulations making it “unduly burdensome” for any of the defined types of facilities to operate within its jurisdiction, it may govern the time, place, and manner of facilities operations and establish civil penalties for violation of the local ordinances and regulations.
3. The Zoning Regulations of the City of Branson West were adopted to protect and provide for the public health, safety, and general welfare of the City; to encourage orderly and beneficial development, to promote good planning and land development practices, and to preserve and protect the value of the City’s land and buildings.
4. Amendment 3 in many respects adds non-medical marijuana to the regulations that Amendment 2 authorized for medical marijuana, such that the City’s zoning code provisions relating to medical marijuana may be extended to non-medical marijuana, commonly called recreational marijuana or adult-use marijuana.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON WEST, MISSOURI AS FOLLOWS:

Section. 1. Amendments to Article II, Definitions

Section 400.090 of the Revised Code of Ordinances of Branson West, Missouri is hereby amended to include the following terms and definitions appearing alphabetically in unnumbered paragraphs:

Marijuana or Marihuana

Cannabis indica, Cannabis sativa, 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 plant and marijuana-infused products. "Marijuana" or "Marihuana" does not include industrial hemp 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-Infused Product

Products means products that are infused, dipped, coated, sprayed, or mixed with marijuana or an extract thereof, including, but not limited to, products that are able to be vaporized or smoked, edible products, ingestible products, topical products, suppositories, and infused prerolls.

Marijuana Cultivation Facility

A facility licensed by the State to acquire, cultivate, process, package, store or site or off site, transport to or from, and sell Marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones) to a to a facility licensed by the State under Article XIV of the Missouri Constitution. A marijuana cultivation facility need not segregate or account for its marijuana products as either non-medical marijuana or medical marijuana. A marijuana cultivation facility's authority to process marijuana shall include the creation of prerolls, but shall not include the manufacture of marijuana-infused products.

Marijuana Dispensary Facility

means a facility licensed by the State to acquire, process, package, store on site or off site, sell, transport to or from, and deliver marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones), marijuana- infused products, and drug paraphernalia used to administer marijuana as provided for in 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 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.

Marijuana-Infused Products Manufacturing Facility

means a facility licensed by the State to acquire, process, package, store, manufacture, transport to or from a medical facility, comprehensive facility, or marijuana testing facility, and sell marijuana-infused products, prerolls, and infused prerolls to a marijuana dispensary facility, a marijuana testing facility, or another marijuana-infused products manufacturing facility. A marijuana infused products manufacturing facility need not segregate or account for its marijuana products as either non-medical marijuana or medical marijuana.

Consumer

means a person who is at least twenty-one years of age.

Daycare

means a child-care facility, as defined by section 210.201 RSMo, or successor provisions, that is licensed by the State of Missouri.

Flowering Plant

Means a marijuana plant from the time it exhibits the first signs of sexual maturity through harvest.

Infused Preroll

Means a consumable or smokable marijuana product generally consisting of : (1) a wrap or paper, (2) dried flower buds, and/or plant material, and (3) a concentrate, oil or other type of marijuana extract either within or on the surface of the product. Infused prerolls may or may not include a filter or crutch at that base of the product.

Marijuana accessories

means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging,

repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

Marijuana Facility

means a comprehensive marijuana cultivation facility, comprehensive marijuana dispensary facility, marijuana testing facility, comprehensive marijuana-infused products manufacturing facility, microbusiness wholesale facility, microbusiness dispensary facility, or any other type of marijuana-related facility or business licensed or certified by the State pursuant to this section, but shall not include a medical facility licensed under section 1 of Article XIV of the Missouri Constitution.

Marijuana Microbusiness Facility

means a facility licensed by the State as a microbusiness dispensary facility or microbusiness wholesale facility, as defined in this section.

Microbusiness Dispensary Facility

means a facility licensed by the State to acquire, process, package, store on site or off site, sell, transport to or from, and deliver marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones), marijuana-infused products, and drug paraphernalia used to administer marijuana as provided for in this section to a consumer, qualifying patient, as that term is defined in section 1 of Article XIV of the Missouri Constitution, or primary caregiver, as that term is defined in section I of Article XIV 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 as 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 facility's authority to process marijuana shall include the creation of prerolls.

Microbusiness Wholesale Facility

means a facility licensed by the State to acquire, cultivate, process, package, store on site or off site, manufacture, transport to or from, deliver, and sell 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 microbusiness wholesale facility may cultivate up to 250 flowering marijuana plants at any given time. A microbusiness wholesale facility's authority to process marijuana shall include the creation of prerolls and infused prerolls.

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.

Owner

means an individual who has a financial (other than a security interest, lien, or encumbrance) or voting interest in ten percent or greater of a marijuana facility.

Preroll

means a consumable or smokable marijuana product, generally consisting of: (1) a wrap or paper and (2) dried flower, buds, and/or plant material. Prerolls may or may not include a filter or crutch at the base of the product.

Primary Caregiver

A person, twenty-one years of age or older, who is responsible for managing the well-being of a Qualified Patient, and who is designated on the primary caregiver's application or otherwise identified with the State of Health and Senior Services as a Qualifying Patient's primary caregiver.

Qualifying Patient

A Missouri resident diagnosed with at least one qualifying medical condition as that term is defined, from time to time, by the State of Health and Senior Services.

Unduly burdensome

means that the measures necessary to comply with the rules or ordinances adopted pursuant to this section subject licensees or potential licensees to such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marijuana facility.

Section. 2. Amendments to Article V, Zoning District Regulations

Section 400.310, "A-1" Agricultural District, Subsection A of the Revised Code of Ordinances of Branson West, Missouri is hereby amended to add a new numbered paragraph 15, to read:

Marijuana Cultivation Facility, which cultivates Marijuana outside, inside a completely enclosed facility, greenhouses or combination of these.

Section 400.360 "C-1" Neighborhood Commercial District. Subsection B of the Revised Code of Ordinances of Branson West, Missouri is hereby amended to delete the word "medical" from paragraph 3, to read:

3. Marijuana Dispensary Facilities.

Section 400.370, "C-2" General Commercial District. Subsection A, numbered paragraph 7 of the Revised Code of Ordinances of Branson West, Missouri is hereby amended to delete the word "medical" to read:

7. Clinics, Marijuana Dispensary Facilities, dental laboratories, and similar medical service facilities.

Section 400.380, "I-1" Light Industrial District. Numbered paragraph 27 of Subsection A of the Revised Code of Ordinances of Branson West, Missouri is hereby amended to delete the word "medical" to read:

27. Marijuana Dispensary Facilities, Marijuana Cultivation Facilities and Marijuana-Infused Products Manufacturing Facilities.

Section 400.390, "I-2" Heavy Industrial District. Numbered paragraph 17, Subsection B of the Revised Code of Ordinances of Branson West, Missouri is hereby amended to delete the word "medical" to read:

17. Marijuana Dispensary Facilities, Marijuana Cultivation Facilities and Marijuana-Infused Products Manufacturing Facilities.

Section 400.410, Accessory Uses and Structures, Subsection C, numbered paragraph 1(f) of the Revised Code of Ordinances of Branson West, Missouri is hereby amended to read:

f. Greenhouse; provided that any greenhouse used solely for cultivating Medical Marijuana for personal use of a Qualified Patient must comply with the following:

- (1) Limited in the quantity of Medical Marijuana plants cultivated therein as determined by the State of Health and Senior Services;
- (2) The greenhouse must be designed, constructed, and secured to permit access only by the Qualifying Patient or Primary Caregiver;

Sec. 3. Amendments to Article VI, Supplemental Use Regulations

Chapter 400, Zoning Regulations, of the Revised Code of Ordinances of Branson West, Missouri, Section 400.455, Standards for Medical Marijuana, is amended as follows:

Section 400.455 Marijuana

- A. As used in this Section, *Marijuana facility* means any of the Marijuana facilities defined in Section 400.090.
- B. Location. No Marijuana facility shall be located within 1,000 feet of any then-existing elementary or secondary school, daycare or church, as measured by the following methods:
 1. In the case of a freestanding facility, the distance between the facility and the school, daycare, or church shall be measured from the external wall of the facility structure closest in proximity to the school, daycare, or church to the closest point of the property line of the school, daycare, or church. If the school, daycare, 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, daycare, or church closest in proximity to the facility.
 2. 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, daycare, or church shall be measured from the property line of the school, daycare, or church to the facility's entrance or exit closest in proximity to the school, daycare, or church.
 3. If the school, daycare, 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, daycare, or church closest in proximity to the facility.

Measurements shall be made along the shortest path between the demarcation points that can be lawfully traveled by foot.

- C. No Marijuana Facility shall be located within 500 feet of residential zoned district or a city park.
- D. As used in this Chapter, *then-existing* elementary or secondary school, day care facility or church means any such school, day care facility or church with a written building permit from the City (i) to be constructed or under construction or (ii) completed and in use, at the time the Marijuana facility first applies for either a zoning or building permit, whichever occurs first.
- E. Hours of Operation. The hours of operation, are as follows:
 - 1. Marijuana Dispensary Facilities may be open from 9:00 a.m. until 8:00 p.m. daily, and not open during other times.
 - 2. MIP Manufacturing is not regulated by City.
- F. *Prohibition of Public Consumption.* No Marijuana or Marijuana-Infused product may be smoked, ingested, administered, or otherwise consumed in public or on the premises of a Marijuana Facility, other than in an area designated by the City for consumption of marijuana, if and, unless and until the City has adopted ordinances permitting of consumption of marijuana in public places.
- G. *Site Plan Review*
 - 1. *Marijuana Cultivation Facilities.* Cultivation facilities may cultivate indoor, outdoor, and in a greenhouse, or a combination of any of the three.
 - a. Cultivation facilities are limited to a maximum square footage of flowering canopy space or the number of flowering plants, as set forth in 19 CSR 30-95.050.
 - b. Outdoor Cultivation facilities must be within a fully secured area enclosed by a razor wire or other similar security fence in compliance with regulations of the Missouri Department of Health and Senior Services.
 - c. Odor control plan must be made in compliance with regulations of the Missouri Department of Health and Senior Services.
- H. *Enforcement*
 - 1. This Ordinance shall be enforced by the City Administrator or an authorized designee, which may be the City's police department.

2. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City.
3. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the City Administrator or the City Administrator's designee shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.
4. An owner, manager, operator, or employee of an area regulated by this Ordinance shall direct a person who is smoking, ingesting, administering or otherwise using Marijuana or Marijuana-Infused Products in violation of this Ordinance to refrain from doing so while on the premises. If the person does not stop smoking, ingesting, administering or otherwise using Marijuana or the infused products, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
5. Notwithstanding any other provision of this Ordinance, an employee or private citizen may bring legal action to enforce this Ordinance.
6. In addition to the remedies provided by the provisions of this Section, the City Administrator or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

I. Violations and Penalties

A person who smokes, ingests, or otherwise consumes Marijuana in public or as prohibited by the provisions of this Ordinance shall be guilty of an ordinance violation, punishable by a fine not exceeding five hundred dollars (\$500.00). This subsection A applies only to Medical Marijuana and is unrelated to recreational sale and use of marijuana under the Missouri penal statute.

A person who owns, manages, operates, or otherwise controls a Marijuana Facility and fails to comply with the provisions of this Ordinance shall be guilty of an infraction, punishable by:

- a. A fine not exceeding two hundred dollars (\$200) for a first violation.

- b. A fine not exceeding two hundred seventy five dollars (\$275) for a second violation within one year.
- c. A fine not exceeding three hundred dollars (\$300) for a third violation within one year
- d. A fine not exceeding four hundred dollars (\$400) for each additional violation within one (1) year.
- e. In addition to the fines established by this Section, violation of this Ordinance by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- f. Odor from a Marijuana Facility. Violation of a Department of Health and Senior Services regulation regarding odor from a Marijuana Facility is hereby declared to be a public nuisance, which may be abated by the City Administrator by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.
- g. Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

J. Public Education

The City Administrator or his designee shall engage in a continuing program to explain and clarify the purposes and requirements of this Ordinance to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 4. Other Applicable Laws

This Ordinance shall not be interpreted or construed to permit smoking, ingesting, administering or otherwise using Marijuana where it is restricted by other applicable laws. The City's authority is defined and limited by Amendment 3 as enacted into Article XIV of the Missouri Constitution.

Sec. 5. Liberal Construction

This Ordinance shall be liberally construed so as to further its purposes.

Sec. 5. Severability

If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

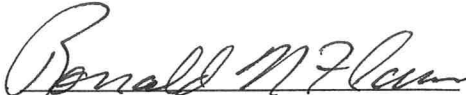
Sec. 6. Implicit Repeal

Any ordinance to the contrary is hereby repealed.

Sec. 7. Adoption.

This ordinance shall be in full force and effect from and after the date of its passage and approval. Read two times, passed and approved on the 14th day of February, 2023, and approved by the Mayor, upon the recommendation of the Planning and Zoning Commission and after a public hearing held on February 6, 2023.

(Seal)


Ron Flam, Mayor

Attest:


City Clerk

FIRST READING AND VOTE: Motion Alderwoman Ayres 2nd Alderman Brant
Roll Call Lonswar Yes, Boody Yes, Brant Yes, Ayres yes Motion Carried
SECOND READING AND VOTE: Motion Alderwoman Ayres, 2nd Alderman
Brant Roll Call Lonswar Yes, Boody Yes, Brant Yes, Ayres Yes Motion
DATE APPROVED: March 7, 2023 Carried

Approved as to form:

