

Planning Commission's Planning Committee

Staff Report

May 24, 2024



Case No:	24-LDC-0007
Project Name:	Medical Cannabis (Marijuana) Use Amendments
Location:	n/a
Applicant:	n/a
Jurisdiction:	Louisville Metro
Council District:	All Council Districts
Case Manager:	Joseph Haberman, AICP, Planning & Design Manager

REQUEST

- An amendment to the Land Development Code (LDC) concerning Medical (Medicinal) Cannabis (Marijuana) Related Uses.

SUMMARY/BACKGROUND

On March 31, 2023, Governor Andy Beshear signed Senate Bill 47 into law, legalizing medical cannabis for Kentuckians beginning January 1, 2025. The provisions are provided in KRS Chapter 218B. The state law is further implemented by regulations provided in the Kentucky Administrative Regulations (see 915 KAR). Cannabis consumption outside of the medical cannabis program remains illegal in Kentucky.

Overview of Kentucky State Law:

<https://kymedcan.ky.gov/laws-and-regulations/Pages/Regulations.aspx>

In addition to the provisions provided in KRS, the Cabinet for Health and Family Services is responsible for developing and implementing regulations for the medical cannabis program.

Cabinet for Health and Family Services FAQ

<https://kymedcan.ky.gov/FAQs/Pages/default.aspx>

Local governments can pass zoning restrictions on medical cannabis businesses, such as cultivators, processors, producers, and dispensaries, to supplement the requirements set forth in state law. Louisville Metro has the following options at this time:

- Take no action. A medical cannabis business would be allowed to operate as early as this year once it is licensed by the state.
- Pass an ordinance to prohibit medical cannabis businesses.
- Pass a resolution to put the matter of medical cannabis businesses to a public vote.
- Place restrictions and/or collect fees related to medical cannabis businesses operating within its jurisdiction.

Prior to the passage of Senate Bill 47, Louisville Metro Council approved a resolution in 2018 supporting medical cannabis legalization in Kentucky. With this support in mind, staff recommends allowing medical cannabis uses with local regulations that supplement the state law and administrative regulations and further ensure compatibility with neighboring uses.

The Cabinet will open its license application period on July 1, 2024. Once licensed, a business may begin operating as early as this year, however, it cannot open to the public and products cannot be made available to prescribers until January 1, 2025. This timeline results in some immediate urgency for Council to consider and adopt local regulations as the state can accept licenses absent of local requirements.

As additional changes to state law have been suggested, staff will monitor state legislation and the effectiveness of any local regulations and may recommend additional amendments or revisions in the future.

STAFF ANALYSIS

As of April 24, 2023, 38 states and the District of Columbia allow the medical use of cannabis products. Other states are in the process of legalizing. The Rohrabacher–Farr Amendment prohibits federal prosecution of individuals complying with state medical cannabis laws. In addition to reviewing the applicable laws in KRS and KAR, staff reviewed zoning regulations in cities that have enacted ordinances limited to the cultivation, processing, and sale of medical cannabis. Staff avoided reviewing regulations related to the sale of recreational cannabis as the impact may be different from a zoning perspective. Some of the city regulations researched included Cincinnati, Columbus, Detroit, Orlando, Pittsburgh, Salt Lake City, and Tulsa. Like Louisville, other cities in Kentucky are currently developing their regulations.

Kentucky Association of Counties FAQ

<https://www.kaco.org/articles/frequently-asked-questions-about-medical-cannabis-and-county-government/>

National Conference of State Legislators Information on State Medical Cannabis Laws:

<https://www.ncsl.org/health/state-medical-cannabis-laws#:~:text=Medical%2DUse%20Update,medical%20use%20of%20cannabis%20products.>

The following types of businesses will be licensed by the state:

- Cultivators: Businesses that plant, raise, harvest, trim, and cure raw plant material in an indoor facility.
- Processors: Businesses that process and package raw plant material into usable product formats.
- Producers: Businesses that act as both cultivators and processors (*the state is not accepting applications for this license type at this time*).
- Safety Compliance Facilities – Facilities involved in contamination and purity testing of raw plant material and medical cannabis products.
- Dispensaries – Businesses that purchase and sell finished products to medical cannabis cardholders.

Among the state requirements already in place is a 1,000' separation between a cannabis business and an existing school or daycare for children. This separation requirement addresses

the concern by some that dispensaries have the potential to influence minors' attitude towards or access to marijuana. It also address the concern by some that potential criminal activities that may occur at or near dispensaries will not affect educational environments.

Additional uses can be included in the local regulations to keep dispensaries at a suitable distance from other uses in which minors may congregate (or modeled after the smoking retail use provisions). The 1,000' distance is based on a provision in the United State Controlled Substance Act and in KRS 218A. 1,000' is a commonly used distance requirement for separation in zoning requirements, including other provisions in the LDC related to blood/plasma collection centers, heavy truck off-street parking/storage, group housing, and smoking retail stores. In addition, the local regulations may include an additional separation requirement between dispensaries to limit overconcentration in an area.

The following LDC amendments are currently recommended by staff (staff may modify any recommendation upon receipt of public input):

The draft recommendations allow dispensaries in commercial areas but restrict concentration through the separation requirements. The recommendations also allow the use in industrial areas which tend to be more isolated from the other uses in which the separation requirements apply. While only two dispensaries may be permitted initially in Jefferson County, the state likely will award additional licenses in the future.

Cultivator, Processor, and Producer:

- Establish the definitions for each use.
- Allow in C-M, EZ-1, PEC, M-1, M-2, and M-3 upon adherence with the special standards.
- Support and reaffirm the 1,000' separation requirement from schools and daycares for children in KRS.
- Support and reaffirm the requirement that such activities occur only indoors in KRS.
- Require a ventilation/air filtration system that prevents odor from being detectible at the boundaries of the parcel where it abuts residential, office, and/or commercial use.

Safety Compliance Facility:

- Establish the definition for such use.
- Allow in C-2 and C-3 with a conditional use permit.
- Allow in C-M, EZ-1, PEC, M-1, M-2, and M-3 upon adherence with the special standards.
- Support and reaffirm the 1,000' separation requirement from schools and daycares for children in KRS.

Dispensary:

- Establish a definition for such use. Any business that sells medical cannabis shall be defined and regulated as such.
- Allow in C-2 and C-3 with a conditional use permit. This will allow each application in a medium to high intensity commercial area to be reviewed for compliance and appropriateness at a public hearing on a case by case basis.
- Allow in C-M, EZ-1, PEC, M-1, M-2, and M-3 upon adherence with the special standards. Allowing without a conditional use permit may encourage businesses to locate in industrial areas that tend to be more isolated from areas in which minors congregate.

- Support and reaffirm the 1,000' separation requirement from existing schools and daycares for children in KRS.
- Add a 1,000' separation requirement from existing parks and park-like uses, including public playgrounds, outdoor recreation uses, and athletic facilities.
- Add a 1,000' separation requirement from an existing community center and/or library.
- Add a 1,000' separation requirement from an existing Religious Building.
- Add a 1,000' separation requirement from an existing Dispensary.
- Allow relief on a case by case basis to the separation requirements not required by state law.
- Place some responsibility on applicants to research and determine compliance with the separation requirements prior to investment in the site and/or operation.
- Affirm that a state license is required.
- Affirm the state required hours of operation of between 8 A.M. and 8 P.M.
- Provide other standards, including but not limited to:
 - Building requirements,
 - Mobile or temporary facilities prohibitions, and
 - Security.
- Require three spaces per 1,000 SF of retail floor area (KRS requires off-street parking).

Medicinal Cannabis Practitioners:

Only registered physicians, osteopaths, and advanced practice registered nurses who are first authorized by their respective licensing board are approved to certify patients to receive medical cannabis cards and prescriptions. As such, staff is not recommending that a new use category be created for medicinal cannabis practitioners. These practitioners may practice in any location in which the zoning currently allows medical care (i.e. medical office, medical clinic, hospital, etc.).

Other suggested administrative improvements are currently recommended by staff (for informational purposes only, no Planning Commission action required):

- Create an interactive map that can be used by the public to determine eligibility (staff has been already began work with Metro GIS on this initiative).
- Establish a website that informs prospective applicants and the public of the requirements.
- Local governments may also assess local fees to compensate for any additional costs caused by the operation of cannabis businesses. If both a county and city allow for the operation of cannabis businesses, and the business is located within city limits, the fee must be shared between the county and the city in a manner that is negotiated/established between the local governments.

In the event recreational use of cannabis is legalized, staff will further evaluate and propose additional recommendations for this different, non-medical use type.

INTERESTED PARTY COMMENTS

No formal interested party comments have been submitted as of the date of this report related to the specific amendments. However, the following recommendations are in compliance with state law and regulations, which have been influenced by public comment.

ATTACHMENTS

None.

PROPOSED AMENDMENTS

The Planning Commission must make a recommendation to Metro Council and the legislative bodies of cities with zoning authority to approve, approve with modifications, or deny the LDC text amendments. This section shows specific amendments to the Louisville Metro version of the LDC. The cities with zoning authority in Louisville Metro have different versions. If any of the cities consider incorporating the amendments into its LDC, staff will assist the city in preparing specific amendments that reflect the nature of the changes recommended in this report.

PROPOSED FINDINGS

WHEREAS, Louisville Metro's current comprehensive plan, known as Plan 2040, became effective on January 1, 2019;

WHEREAS, Plan 2040 sets a framework for growth by using five guiding principles – Connected, Healthy, Authentic, Sustainable, and Equitable (CHASE) – to strategically manage all the benefits and challenges that come from adding more people;

WHEREAS, Plan 2040 includes a Livability Element that provides guidance and direction for the provision and maintenance of the resources necessary for the health and well-being of citizens. This includes a focus on public health, promoting access to fresh food and health care, as well as designing places for health and safety;

WHEREAS, Livability Goal 2 of Plan 2040 is to ensure equitable health and safety outcomes for all; and

WHEREAS, Community Form Goal 2, Policy 2 of Plan 2040 states: Encourage development of non-residential and mixed uses in designated activity centers provided proposed uses, density and design are compatible with adjacent uses and meets Form District guidelines.

LOUISVILLE METRO LAND DEVELOPMENT CODE

The following changes are staff recommendations and preliminary. They are subject to change upon public input and further review. To be effective, any changes must be approved by Metro Council.

1.2.2 Definitions

For the purposes of Chapters 1 through 11 the following terms, phrases, words and their derivations shall have the meaning contained herein, except where the context clearly requires otherwise.

Athletic Facility, Indoor and Outdoor – A place designed and equipped primarily for observation and/or training of sports, including but not limited to a sports field, basketball or tennis court, stadium, or arena. Accessory facilities include, but are not limited to, equipment storage facilities, spectator seating, refreshment stands, restrooms, locker rooms and parking. The term does not include paint ball ranges or animal racetracks.

Child Care Center – Child care for any size group of children.

Community Center - A facility that is available for public use as a meeting place or for recreation that does not limit access only to members and does not charge membership dues.

Medical or Medicinal Marijuana – See Medicinal Cannabis.

Medical or Medicinal Cannabis – As defined in KRS 218B.010: (a) 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; (b) includes medicinal cannabis products and raw plant material; and (c) does not include industrial hemp or industrial hemp products as defined in KRS 260.850.

Medicinal Cannabis Business – As defined in KRS 218B.010, an entity licensed under KRS 218B as a cultivator, dispensary, processor, producer, or safety compliance facility.

Medicinal Cannabis Cultivator – A Medicinal Cannabis Business that plants, raises, harvests, trims, and/or cures raw plant material in an indoor facility, licensed as such under KRS 218B.080, 218B.085, and 218B.090.

Medicinal Cannabis Dispensary – A Medicinal Cannabis Business that purchases and sells finished products to medical cannabis cardholders, licensed as such under KRS 218B.080, 218B.085, and 218B.090.

Medicinal Cannabis Practitioner – As defined in KRS 218B.010, a physician or an advanced practice registered nurse who is authorized to prescribe controlled substances under KRS 314.042, who is authorized by his or her state licensing board to provide written certifications pursuant to KRS 218B.050.

Medicinal Cannabis Processor – A Medicinal Cannabis Business that processes and packages raw plant material into usable product formats, licensed as such under KRS 218B.080, 218B.085, and 218B.090.

Medicinal Cannabis Producer – A Medicinal Cannabis Business that acts as both a Medicinal Cannabis Cultivator and a Medicinal Cannabis Processor, licensed as such under KRS 218B.080, 218B.085, and 218B.090.

Medicinal Cannabis Safety Compliance Facility – A Medicinal Cannabis Business involved in contamination and purity testing of raw plant material and medical cannabis products, licensed as such under KRS 218B.080, 218B.085, and 218B.090.

Park – A relatively large open space available for recreation and usually located at the edge of a development, neighborhood or village. It may be surrounded by roadways, the fronts of buildings, or the side or rear of publicly or privately owned lots. It is usually partially enfronted by buildings and has a landscape which may consist of natural areas, paved paths and trails, some open lawn, trees, recreational facilities and open shelters, and requires substantial maintenance.

Playground - A relatively small open space containing play equipment and areas for active recreation.

Recreation (Use), Outdoor - Any premises (whether public or private) where the principal use is the provision of outdoor amusements, sports, games, athletic facilities, or other outdoor recreational facilities and/ or services except golf courses.

Religious Building - Any building and the grounds of a building used by an association of persons for religious worship and associated buildings and grounds used for instruction regarding the tradition and tenets of a religious faith or for offices of persons engaged in the faith based activities of the religion or for social and recreational purposes or child care centers, or as a meeting hall. Such buildings and grounds may not also be used for retail sales or other merchandising purposes, except that such buildings and grounds may be used for religious bazaars and suppers. No such building or portion of a building may be used primarily as a commercial theater, except that occasional plays or pageants for which a price of admission is charged may be held. Churches, synagogues, temples and mosques are considered religious buildings for purposes of this Land Development Code.

School – A facility used for education or instruction in any branch of knowledge, and including the following: elementary, middle and high schools, whether public or private; colleges, community colleges and universities; vocational and professional schools giving instruction in vocational, professional, technical, industrial, musical, dancing, dramatic, artistic, linguistic, scientific, religious or other special subjects. This term does not include child care centers if separate from elementary schools.

4.2.67 Medicinal Cannabis Safety Compliance Facility or Medicinal Cannabis Dispensary in a C-2 or C-3 district

A Medicinal Cannabis Safety Compliance Facility or Medicinal Cannabis Dispensary may be allowed in a C-2 or C-3 district upon the granting of a Conditional Use Permit and compliance with the following requirements. This section does not apply to any Safety Compliance Facility or Dispensary that may be permitted with special standards pursuant to Section 4.3.30 of this Land Development Code.

- A. A Safety Compliance Facility or Dispensary shall be not located within 1,000 feet of the boundary of any parcel occupied by any of the following uses (as measured in a straight line from parcel boundary to parcel boundary):
 - 1. School
 - 2. Child Care CenterThis separation is required by KRS and is not subject to relief.
- B. A Dispensary shall not be located within 1,000 feet of the boundary of any parcel occupied by any of the following uses (as measured in a straight line from parcel boundary to parcel boundary):
 - 1. Park
 - 2. Public Playground
 - 3. Recreation (Use), Outdoor
 - 4. Public Community Center
 - 5. Athletic Facility, Indoor and Outdoor
 - 6. Public Library
 - 7. Religious Building
 - 8. Another Dispensary
- C. Medicinal cannabis consumption is not permitted on the premises.
- D. All use must occur indoors within a secure building, excluding any activity at a permitted loading area, drive-through window, or curbside pickup space. The building or secure structure shall meet all applicable state and local building codes. Such use is not permitted in a mobile or temporary building/structure.
- E. The hours of operation for a Dispensary shall be no earlier than eight (8) A.M. and no later than eight (8) P.M.
- F. A Dispensary shall not be located at the same site and location used for growing, cultivating, or processing medicinal cannabis or in the same office space as a Medicinal Cannabis Practitioner or other physician.
- G. For a Dispensary, there shall be at least three off-street parking spaces per 1,000 square feet of retail floor area. Additional parking may be required by the Board of Zoning Adjustment based on the land uses and density of the immediate vicinity. A Dispensary shall have a secure area for the loading and unloading of medicinal cannabis into and from a transport vehicle.
- H. For a Safety Compliance Facility, parking shall be provided for an office pursuant to Chapter 9 of this Land Development Code. Additional parking may be required by the Board of Zoning Adjustment based on the land uses and density of the immediate vicinity.

- I. A Safety Compliance Facility or Dispensary shall not operate until it has been issued a license from the Commonwealth of Kentucky pursuant to KRS.

Editor's Note: See KRS 218B.140 and 915 KAR 1:070 for more information.

In the event any regulation in this section is in conflict with state law (KRS) or state regulations (KAR), the more restrictive provision shall apply.

4.3.30 Medicinal Cannabis Safety Compliance Facility or Medicinal Cannabis Dispensary

In the C-M, EZ-1, PEC, M-1, M-2, and M-3 zoning districts, Medicinal Cannabis Safety Compliance Facilities and Medicinal Cannabis Dispensaries may be permitted in accordance with the following special standards:

- A. A Safety Compliance Facility or Dispensary shall be not located within 1,000 feet of the boundary of any parcel occupied by any of the following uses (as measured in a straight line from parcel boundary to parcel boundary):

1. School
2. Child Care Center

This separation is required by KRS and is not subject to relief. As this land use is permitted with special standards, an advanced approval by the Office of Planning is not formally required by this Land Development Code. The burden is on the property owner/dispensary agent to determine compliance with these separation requirements prior to investment in the site and/or operation.

- B. A Dispensary shall not be located within 1,000 feet of the boundary of any parcel occupied by any of the following uses (as measured in a straight line from parcel boundary to parcel boundary):

1. Park
2. Public Playground
3. Recreation (Use), Outdoor
4. Public Community Center
5. Athletic Facility, Indoor and Outdoor
6. Public Library
7. Religious Building
8. Another Dispensary

This separation requirement is eligible for a waiver in accordance with Chapter 11, Part 8 of the LDC. As this land use is permitted with special standards, an advanced approval by the Office of Planning is not formally required by this Land Development Code. The burden is on the property owner/dispensary agent to determine compliance with these separation requirements prior to investment in the site and/or operation.

- C. Medicinal cannabis consumption is not permitted on the premises.

- D. All use must occur indoors within a secure building, excluding any activity at a permitted loading area, drive-through window, or curbside pickup space. The building or secure structure shall meet all applicable state and local building codes. Such use is not permitted in a mobile or temporary building/structure.

- E. The hours of operation for a Dispensary shall be no earlier than eight (8) A.M. and no later than eight (8) P.M.
- F. A Dispensary shall not be located at the same site and location used for growing, cultivating, or processing medicinal cannabis or in the same office space as a Medicinal Cannabis Practitioner or other physician.
- G. For a Dispensary, there shall be at least three off-street parking spaces per 1,000 square feet of retail floor area. A Dispensary shall have a secure area for the loading and unloading of medicinal cannabis into and from a transport vehicle.
- H. For a Safety Compliance Facility, parking shall be provided for an office pursuant to Chapter 9 of this Land Development Code.
- I. A Safety Compliance Facility or Dispensary shall not operate until it has been issued a license from the Commonwealth of Kentucky pursuant to KRS.

Editor's Note: See KRS 218B.140 and 915 KAR 1:070 for more information.

In the event any regulation in this section is in conflict with state law (KRS) or state regulations (KAR), the more restrictive provision shall apply.

4.3.31 Medicinal Cannabis Cultivator, Processor, or Producer:

In the C-M, EZ-1, PEC, M-1, M-2, and M-3 zoning districts, Medicinal Cannabis Cultivators, Processors, and Producers may be permitted in accordance with the following special standards:

- A. A Medicinal Cannabis Cultivator, Processor, or Producer shall be not located within 1,000 feet of the boundary of any parcel occupied by any of the following uses (as measured in a straight line from parcel boundary to parcel boundary):
 - 1. School
 - 2. Child Care CenterThis separation is required by KRS and is not subject to relief. As this land use is permitted with special standards, an advanced approval by the Office of Planning is not formally required by this Land Development Code. The burden is on the property owner/dispensary agent to determine compliance with these separation requirements prior to investment in the site and/or operation.
- B. All use must occur in an enclosed, locked facility. Enclosed, locked facility means an indoor growing space such as a room, greenhouse, building, or other indoor enclosed area that is maintained and operated by a cultivator or producer and is equipped with locks and other security devices that permit access only by authorized agents of the cultivator or producer, as required by KRS or KAR.
- C. Parking shall be provided for a primarily plant or factory pursuant to Chapter 9 of this Land Development Code.
- D. If the parcel abuts residential, office, and/or commercial use, a ventilation/air filtration system is required that prevents odor from being detectible at the boundaries of the parcel where it abuts such residential, office, and/or commercial use.

E. The cultivation of medicinal cannabis is not permitted as part of any agriculture use allowed in this Land Development Code unless otherwise exempted from local regulation by state law.

F. A Medicinal Cannabis Cultivator, Processor, or Producer shall not operate until it has been issued a license from the Commonwealth of Kentucky pursuant to KRS.

Editor's Note: See KRS 218B.140 and 915 KAR 1:070 for more information.

In the event any regulation in this section is in conflict with state law (KRS) or state regulations (KAR), the more restrictive provision shall apply.