

**ST. MARY'S COUNTY GOVERNMENT
OFFICE OF THE COUNTY ATTORNEY**

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Commissioners of St. Mary's County

James R. Guy, President
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Eric Colvin, Commissioner
Todd B. Morgan, Commissioner
John E. O'Connor, Commissioner

MEMORANDUM

TO: Planning Commission

CC: David A. Weiskopf, Interim County Administrator
Bill Hunt, Director, Department Land Use & Growth Management

FROM: John Sterling Houser, Assistant County Attorney

RE: Staff Report for Public Hearing re: Proposed Text Amendments Relating to
Medical Cannabis Use Types

DATE: May 9, 2022

Topic & Purpose of Hearing

On March 22, 2022, the Commissioners of St. Mary's County passed a motion directing the Planning Commission "to review, hear, consider, draft and make recommendations to the County Commissioners to approve or disapprove the adoption of an ordinance to amend the text of the Comprehensive Zoning Ordinance regarding future medical Cannabis growing facilities, process facilities, and dispensaries." A draft text amendment has been prepared by departmental staff. The public hearing will solicit community input on how the comprehensive zoning ordinance should treat future medical cannabis growers, processors, and dispensaries.

Background

Maryland legalized the use of cannabis for medicinal purposes in 2014, with the first licenses to grow, process, and dispense medical cannabis granted in 2017. Since that time, the statewide medical cannabis industry has grown to \$595,000,000 in annual retail sales¹ and just under 150,000 statewide patients registered through the Maryland Medical Cannabis Commission ("MCCC").²

State law limits the maximum number of grower, processor, and dispensary licenses. Currently, those limits are 22 grower licenses, 28 processor licenses, and 102 dispensary licenses. In a report from the Department of Legislative Services during the 2022 legislative session, DLS reported that, as of January 1, 2022, a total of 19 final grower licenses, 20 final processor licenses, and 95 final dispensary licenses had been issued by MCCC.³ The application process and fees are burdensome; to apply alone requires \$5,000 to \$6,000 depending on the license

¹https://mmcc.maryland.gov/Documents/2021_PDF_Files/_Dispensary%20monthly%20sales%20%28final2021%29.pdf

² https://mmcc.maryland.gov/Documents/2022_PDF_Files/Patient%20Stats/2021_certpatients%282%29.pdf

³ https://mgaleg.maryland.gov/2022RS/fnotes/bil_0008/sb0628.pdf

sought, and annual license fees range from \$40,000 per year for dispensaries to \$125,000 per year for growers and processors. Those who receive licenses must comply with a comprehensive and costly regulatory scheme administered by the MCCC that demands near-constant recording and reporting of individual plant growth and quality control, inventory tracking, equipment sanitation, water quality control, and other related health, sanitation, and security matters.

Because of the limited number of licenses available, the entry costs to the industry, and the burden of continual regulatory compliance, the prevailing trend in Maryland, under the current regulatory scheme, has been, with respect to growers, large-scale facilities of several tens of thousands of indoor square footage. As a result of Maryland's climate and a desire to control growing conditions for quality control and proof of compliance, it appears indoor growth is an established preference within the Maryland industry. It has not been an uncommon practice throughout the state to site medical cannabis cultivation and production activities in old factories or warehouses that are retrofitted with modern technology; new construction of buildings of similar character appear common.

County's Authority to Zone

Though state regulations encompass many facets of the daily operation of the medical cannabis industry, zoning and land use regulations have been left to individual counties. There has not been a uniform approach across the state; some counties have opted to treat medical cannabis using existing use-types, while at least one-third have amended their zoning ordinances to provide for specific regulation of medical cannabis use types. A handful have yet to encounter these uses. In adopting regulations related to medical cannabis, the Office of the Attorney General has issued an opinion that counties may not preempt the state-wide legalization of medical cannabis by adopting regulations so onerous so as to completely prohibit - whether explicitly or implicitly - medical cannabis growers, processors, or dispensaries from operating within their jurisdiction.

Proposed Text Amendments

The proposed text amendments follow the course charted by the other counties that have chosen to create specific use-types for the medical cannabis industry. In preparing this initial draft text amendment care was taken to survey existing regulations across the state, as well as regulations from states and localities with more mature cannabis industries than can be found in Maryland. The proposed text amendment was drafted considering these other regulations, typical conditions encountered in the statewide industry, and existing state regulations. A summary of the proposed text amendments' provisions for growers, processors, and dispensaries are as follows:

Common to All

Common to all proposed use types is employment of conditional ("C") use types only, and requirements to follow all applicable state regulations related to medical cannabis industry. As mentioned above, these regulations cover many aspects of each plant's operation, such as environmental protections and physical security, and would be redundant in a county-level zoning ordinance. Treating each use as a conditional use only, regardless of zoning district, mirrors how the Comprehensive Zoning Ordinance approaches other industries that traditionally have a heightened potential to generate a public nuisance. A conditional use will require a public hearing and approval from the Board of Appeals before it may receive final approval and go

forward. Minor site plan approval is required for each use less than this administrative burden, insofar as possible, by streamlining public notice and public hearing requirements.

Medical Cannabis Grower

The proposed text amendment allows medical cannabis growers in the following zones: Industrial District (I), Limited Commercial Industrial District (LCI), High Intensity Mixed-Use District (MXH), and Town Center Mixed Use District (TMX). These districts are intended to handle the large facilities and high-intensity site uses commonly encountered in this industry. General standards include setbacks of 500 feet from the property lines of existing residences, schools, day cares, substance abuse treatment facilities. Where similar setbacks are found elsewhere in Maryland, they generally apply to these same types of properties.

The text amendment proposes to ensure odor control by requiring all cultivation and post-harvest production activities be conducted indoors, where air purifiers and other odor control measures can effectively abate any potential nuisance. Technology providing for odor control is available, commercially feasible, and effective. Certification from a qualified professional must be provided that the installed control measures will effectively curtail odors from being noticeably detected outside the facility.

Medical Cannabis Processor

The proposed text amendment allows medical cannabis processors in the following zones: Industrial District (I), Limited Commercial Industrial District (LCI), High Intensity Mixed-Use District (MXH), and Town Center Mixed Use District (TMX). Acknowledging the absence of cultivation of cannabis, more specific standards related to odor control are omitted from this use. In other respects, processors will be subject to the same general standards as growers.

Medical Cannabis Dispensary

The proposed text amendment allows medical cannabis dispensaries in the following zones: High Intensity Mixed-Use District (MXH), Medium Intensity Mixed-Use District (MXM), Low Intensity Mixed-Use District (MXL), Corridor Mixed-Use District (CMX), Town Center Mixed Use District (TMX), Rural Commercial Limited District (RCL), and Rural Service Center District (RSC).

Considering the reduced impacts from dispensaries relative to growers or processors, there is no setback restriction from residences for dispensaries. Setbacks with respect to schools, day care facilities, and substance abuse treatment facilities are 500 feet. Additional general standards are provided that relate to permissible signage at a standard; these standards reflect measures taken by other counties, as well as state-level regulations on the advertisement of medical cannabis.