

GENERAL INFORMATION

Applicant: City of Bloomington

Request: Consider an ordinance to:

- Establish licensing requirements for medical marijuana businesses,
- Allow medical marijuana distribution facilities as conditional uses in B-2, B-4, C-2, C-3, C-5, CR-1, CX-2, or LX zoning districts, and;
- Create performance standards for medical marijuana distribution facilities and to establish related standards.

CHRONOLOGY

City Council Action: 1/26/15 - City Council adopted a one-year moratorium on medical marijuana facilities (City Code Section 21.505 (c))

Planning Commission Agenda: 5/14/15 – Study session discussion of medical marijuana draft ordinance

City Council Agenda: 7/6/15 – Study session discussion of medical marijuana draft ordinance

BACKGROUND

On January 26, 2015, The Bloomington City Council adopted a one-year moratorium on medical marijuana manufacturing facilities or dispensaries applications so City staff could study the need for amendments or additions to the City’s official controls to protect the public health, safety and welfare from the potential negative impacts of such land uses.

Marijuana remains a controlled substance that is illegal under federal law. When the Minnesota Legislature approved the THC Therapeutic Research Act, Minnesota Statutes §§152.21 -152.37 (the “Act”) it recognized the many practical difficulties this status creates when opening the door to medical marijuana distribution facilities. The Act and the State rules implementing the Act currently are very strict and only allow marijuana in a liquid, pill or vapor form for a limited number of qualified medical conditions. It also limits the current number of State distribution facilities to eight, one per Congressional District. No facility is currently located in Bloomington, although there was early interest in doing so. Any expansion of the number of facilities is likely to rekindle interest in a Bloomington location.

It is possible that the Commissioner of Health will expand the number of qualifying medical conditions to include chronic pain, which will greatly increase the number of patients qualified for medical marijuana and likely require the authorization of many additional distribution facilities. It is also predictable that other features in the Act may soften over time, potentially to include distribution of medical marijuana in other forms, some of which may also be more suitable for recreational use. The only manner in which the City can ensure that the State’s current limitations as to form of marijuana, security requirements, and other operational characteristics remain constant is to adopt a licensing ordinance and land use performance standards to codify these requirements.

Concerns about Medical Marijuana

The federal prohibition on marijuana creates the following challenges for the State and its cities:

- Physicians, nurse practitioners, and physicians' assistants can only certify a qualifying medical condition, they cannot prescribe marijuana under their licensing restrictions;
- The distribution facility functions as a stand-alone clinic where patients must be examined by a pharmacist, who then determines the type of medical marijuana and the dosage. Many patients will be vulnerable due to their medical conditions.
- Credit card companies will not authorize transactions dealing in marijuana; hence the clinic operates as a 'cash only' business.
- Insurance companies will not cover medical marijuana and it is expensive ranging from \$55 to \$85 per gram; totaling an average of \$500 per cash transaction.
- Due to the uncovered, high cost of medical marijuana there has developed a black market for stolen medical marijuana which is then sold to qualified patients and others at a lower cost.

These factors result in serious security concerns for patients going to and from the distribution facility, an increased risk of employee theft of the product, an increased risk of burglary and non-employee theft from the building.

The proposed licensing ordinance and land use performance standards attempt to address these concerns. City staff recommends a licensing ordinance in addition to zoning restrictions, because only by licensing can the City inspect and enforce day to day operational requirements at medical marijuana businesses. This report summarizes the proposed ordinance. The full language of the proposed ordinance is attached.

PROPOSED LICENSING REQUIREMENTS

In addition to the screening of license applicants and their employees in the same manner as the City screens other closely regulated businesses, the ordinance contains the following provisions, many of which mirror current State rules. Those that go beyond State rules mirror the City's other operational requirements for businesses with a propensity to attract criminal activity, such as pawnbrokers. The following is a summary of the licensing requirements:

- Records of transaction. These records assist the City and a distribution facility in deterring or determining employee theft, as well identifying customers as State registered medical marijuana patients.
- Hours of operation. The proposed ordinance sets hours of operation from 7 a.m. to 7 p.m. These hours attempt to strike a balance between providing customer convenience and curbing late night hours – as late night hours are associated with increased risk of criminal activity.
- Security guards/ CCTV/ Recording requirements/ Alarm system. These requirements mirror current State rules established by the commissioner of health. Local codification ensures that the requirements remain enforceable should the commissioner change the rules.
- Building location/ Lighting. Maximize the 'eyes on the street' concept and minimize the risk of criminal activity.
- Inconspicuous display/Exterior signage. Attempt to make the use of the building as a marijuana distribution facility less noticeable. These also mirror the current State rules.

- ATM. Requirements are proposed, so patients do not have to carry cash to the facility.
- Inspection of Items. Requirements allow the licensing authority and police to ascertain compliance with State law and City ordinances restricting the type of product sold, its display and operability of the required security measures.
- No paraphernalia or other merchandise. This subsection restricts distribution facilities from selling other forms of marijuana, illegal drugs, tobacco and drug delivery devices (vaporizers) not exclusive to the delivery of medical marijuana. Delivery devices and supplies needed for the ingestion of medical marijuana are allowed.
- Limit on number of licensed facilities. Limits the number of facilities to one per 100,000 Bloomington residents or fraction thereof. For example, if the population of Bloomington grew to 150,000 residents only one distribution facility would be allowed.
- Miscellaneous provisions. Are consistent with the City's other licensing ordinances.

PROPOSED LAND USE PERFORMANCE STANDARDS

Medical Marijuana Land Uses

There are three land use types associated with the medical marijuana industry, as stipulated by the State of Minnesota legislature in the THC Therapeutic Research Act, Minn. Stat. §§152.21:

- **Manufacturing facilities:** Where medical marijuana is cultivated, harvested, manufactured and packaged.
- **Laboratories:** Where medical marijuana samples are tested to ensure compliance with State manufacturing standards.
- **Distribution facilities:** Where medical marijuana is sold and distributed to patients on the State's medical marijuana register.

The proposed ordinance sets specific land use performance standards for distribution facilities.

Manufacturing facilities are currently prohibited by virtue of their status as a commercial agriculture use. City Code Section 21.302.06(d) prohibits commercial agriculture in all Bloomington zoning districts due to potential negative impacts on neighboring properties, and because these uses are frequently lower intensity, lower employment, lower value uses. Staff is not proposing to change the commercial agriculture prohibition in this ordinance.

Laboratories are permitted uses in Bloomington's industrial zoning districts. Therefore a medical marijuana testing laboratory would be allowed in any Bloomington industrial zoning district. The Minnesota Department of Health staff indicate that laboratories will only have very small amounts of medical marijuana product on site for testing purposes and therefore are unlikely crime targets and do not have the potential to create negative impacts on neighboring properties. Therefore the ordinance does not propose to differentiate between medical marijuana testing laboratories and other types of laboratories.

Proposed Distribution Facility Standards

The land use regulations and performance standards proposed for medical marijuana distribution facilities are summarized in this section. Some regulations and standards are repeated to reinforce the licensing standards listed in Chapter 14.

- Allows distribution facilities as a conditional use in the following districts:
 - B-2, B-4, C-2, C-3, C-5, CR-1, CX-2, and LX (all zoning districts where pharmacies are currently allowed as stand-alone uses).
- Prohibits:
 - The sale of any products other than medical marijuana within a dispensary.
 - The sale of non-medical marijuana.
- Requires all distribution facilities be sited at least 1,000 feet from any existing K-12 schools (also a State requirement).
- Allows only one distribution facility per 100,000 Bloomington residents or fraction thereof.
- Sets requirements for multiple security measures such as electronic controlled access systems, building location, and lighting.
- Requires one parking space per 285 square feet of distribution facility gross floor area (which matches medical office uses).

The attached map shows where a distribution facility would be allowed under the proposed performance standards.

PUBLIC OUTREACH

Notice of the public hearing on the proposed amendments to the City Code was published in the Sun Current, the official newspaper. Notice will also be sent via e-mail to registered users of the “Zoning Ordinance Updates” and “Planning Commission” e-subscribe groups. The proposed ordinance was also sent to Minnesota Medical Solutions, LeafLine Labs, and the Minnesota Department of Health for their review. No comments were received from any of the three organizations. Lastly, the proposed amendments and supporting information contained in the staff report will be posted on the City website prior to the September 17, 2015 public hearing.

RECOMMENDATION

Staff recommends the following motion:

In Case 10000G-15, I move to recommend approval of the Ordinance as attached to the staff report to amend Chapters 14, 19, and 21 of the City Code.