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 Sponsored by: Council members Hinman and Kuehn

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6 **AN ORDINANCE AMENDING CERTAIN PROVISIONS OF TITLE**
7 **IV: LAND USE, CHAPTER 400; ZONING CODE, TO ESTABLISH A**
8 **MEDICAL MARIJUANA LAND USE WITHIN THE CITY OF**
9 **O’FALLON, MISSOURI.**

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11 **WHEREAS**, on November 6, 2018, a majority of the qualified
12 voters of the State of Missouri approved the adoption of Amendment
13 2 to the Missouri Constitution, to enact Article XVI, Section 1,
14 relating to access to medical marijuana, which became effective on
15 December 6, 2018; and

16 **WHEREAS**, Amendment 2 permits cities to enact ordinances not in
17 conflict therewith governing the time, place, and manner of
18 operation of medical marijuana cultivation facilities, medical
19 marijuana dispensary facilities, medical marijuana-infused products
20 manufacturing facilities, and medical marijuana testing facilities; and

21 **WHEREAS**, the City of O’Fallon wishes to regulate the location
22 and operation of medical marijuana cultivation facilities, medical
23 marijuana dispensary facilities, medical marijuana-infused products
24 manufacturing facilities, and medical marijuana testing facilities to
25 protect the health, safety, and welfare of the residents, businesses, and
26 property owners in the City; and

27 **WHEREAS**, the general welfare, health, morals and safety of the
28 citizens of this City will be promoted by enactment of this Chapter, and

29
30 **WHEREAS**, a Public Hearing was held on March 7, 2019 by the
31 Planning and Zoning Commission regarding the proposed ordinance;
32 and

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34 **WHEREAS**, following the Public Hearing on March 7, 2019 by the
35 Planning and Zoning Commission and after consideration of the
36 request and testimony presented therein, the Planning and Zoning
37 Commission recommended approval of the ordinance to the City
38 Council; and

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WHEREAS, a Public Hearing was held on March 14, 2019 by the City Council regarding the ordinance; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF O’FALLON, MISSOURI, AS FOLLOWS:

Section One. Section 400.035: Definitions of Article II: Rules and Definitions of Title IV of the Municipal Code is hereby amended to read as follows: (those subsections not specifically set forth herein are not altered or amended in any way and, therefore, remain in full force and effect).

“Marijuana” or “Marihuana” *Cannabis indica, Cannabis sativa, and 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” do 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 Products, Products that are infused with marijuana or an extract thereof and are intended for use or consumption other than by smoking, including, but not limited to, edible products, ointments, tinctures and concentrates.

Medical Marijuana Cultivation Facility, A facility licensed by the Missouri Department of Health and Senior Services to acquire, cultivate, process, store, transport, and sell marijuana to a medical marijuana dispensary facility, medical marijuana testing facility, or to a medical marijuana-infused products manufacturing facility.

Medical Marijuana Dispensary Facility, A facility licensed by the Missouri Department of Health and Senior Services to acquire, store, sell, transport, and deliver marijuana, marijuana-infused products, and drug paraphernalia used to administer marijuana to a qualifying patient, a primary caregiver, another medical marijuana dispensary facility, a medical marijuana testing facility, or a medical marijuana-infused products manufacturing facility.

76 **Medical Marijuana-Infused Products Manufacturing Facility,** A
77 facility licensed by the Missouri Department of Health and Senior
78 Services to acquire, store, manufacture, transport, and sell
79 marijuana-infused products to a medical marijuana dispensary
80 facility, a medical marijuana testing facility, or to another medical
81 marijuana-infused products manufacturing facility.

82 **Medical Marijuana Testing Facility,** A facility certified by the
83 Missouri Department of Health and Senior Services to acquire, test,
84 certify, and transport marijuana.

85 **Section Two.** Section 400.145.B of Article IV: District Regulations of
86 Title IV of the Municipal Code is hereby amended to read as follows:
87 (those subsections not specifically set forth herein are not altered or
88 amended in any way and, therefore, remain in full force and effect).

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90 B. Permitted Uses

91 18. Medical marijuana cultivation facility entirely
92 within an enclosed building

93 19. Medical Marijuana-Infused Products
94 Manufacturing Facility

95 20. Medical Marijuana Testing Facility

96 21. Medical Marijuana Dispensary Facility

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98 **Section Three.** Section 400.245 of Article VI: Supplementary District
99 Regulations of Title IV of the Municipal Code is hereby added.

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101 400.245 Medical Marijuana. The purpose of this division is to regulate
102 the placement and licensing of facilities for the dispensing, selling,
103 cultivating, manufacturing, storing, and testing of marijuana and
104 marijuana-infused products, to the extent permitted by the Missouri
105 Constitution, applicable statutes enacted by the General Assembly,
106 and regulations promulgated by the Missouri Department of Health
107 and Senior Services, and to protect the health, safety, and welfare of
108 the residents, businesses, and property owners in the City.

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110 A. No marijuana related use, activity or facility shall emit an odor
111 or in any way cause a public nuisance per Chapter 13 of this
112 Code. Appropriate ventilation systems to prevent any odor of
113 marijuana or fumes from leaving the premises or other

- 114 changes to the facilities can be required if a public nuisance
115 violation occurs.
- 116 B. No more than a total of ten (10) Medical Marijuana Dispensary
117 Facilities will be allowed within the City Limits.
- 118 C. Each Medical Marijuana Cultivation Facility, Medical Marijuana
119 Testing Facility, Medical Marijuana-Infused Products
120 Manufacturing Facility or Medical Marijuana Dispensary Facility
121 shall be located on properties that meet the following distance
122 requirements:
- 123 1. No marijuana related uses shall be operated or
124 maintained within seven hundred and fifty
125 (750) feet of any school, child day-care center
126 or church.
 - 127 2. No marijuana related uses shall be operated or
128 maintained within one thousand five hundred
129 (1,500) feet of another marijuana related use
130 except when marijuana sales represents less
131 than 5% of the dollar volume of business in a
132 state or federally licensed pharmacy.
133 Marijuana related uses under the same
134 ownership and on the same property are
135 exempt from this requirement.
 - 136 3. The distances described in this section shall be
137 computed by direct measurement from any building
138 on land used for the above purposes to the nearest
139 portion of the building housing the Medical Marijuana
140 Cultivation Facility, Medical Marijuana Testing
141 Facility, Medical Marijuana-Infused Products
142 Manufacturing Facility or Medical Marijuana
143 Dispensary Facility, using a straight line.
- 144 D. The waiting area and the area of a Medical Marijuana
145 Dispensary Facility where marijuana or marijuana-infused
146 products are physically delivered to a qualifying patient or
147 primary caregiver shall be separated by a solid wall and solid
148 door so that persons in the waiting area are obstructed from
149 observing the delivery of the marijuana or marijuana infused
150 products to the qualifying patient or primary caregiver. No
151 loitering will be permitted at any facility.
- 152 E. No marijuana or marijuana-infused product shall be displayed
153 so as to be visible through glass, windows, or doors by a
154 person of normal visual acuity standing at the outside

- 155 perimeter of a Facility.
- 156 F. Paraphernalia as defined in section 215.610, excluding (l) of
157 the Revised Statutes of Missouri, as may be amended, may be
158 lawfully sold at a Medical Marijuana Dispensary Facility. Such
159 items may not be publicly displayed and may be sold,
160 displayed and provided only to patients or primary caregivers
161 of patients.
- 162 G. The sale or consumption of alcohol within a Facility is
163 prohibited.
- 164 H. No person under the age of eighteen (18) shall be allowed in
165 any portion of a Medical Marijuana Cultivation Facility, Medical
166 Marijuana Testing Facility or Medical Marijuana-Infused
167 Products Manufacturing Facility. The entrance to a Facility
168 shall be clearly and legibly posted with notice indicating that
169 persons under the age of eighteen (18) are precluded from
170 entering the premises.
- 171 I. A Medical Marijuana Dispensary Facility shall not dispense
172 more than four (4) ounces of a usable form of medical
173 marijuana per patient in a thirty day period, except as
174 otherwise allowed by law [Art. 2, sec 3(13)]. All marijuana
175 sold or otherwise distributed shall be in a sealed container.
176 Such packaging shall have a label that indicates the quantity
177 and advises the purchaser that the marijuana is intended for
178 use solely by the patient, and that any resale or redistribution
179 to any third person is a criminal violation.
- 180 J. The consumption, inhalation or other personal use of
181 marijuana or medical marijuana-infused products on or within
182 the premises of a Medical Marijuana Cultivation Facility,
183 Medical Marijuana Testing Facility, Medical Marijuana-Infused
184 Products Manufacturing Facility or Medical Marijuana
185 Dispensary Facility is prohibited, except that a Medical
186 Marijuana Testing Facility may consume marijuana during the
187 testing process and only as the consumption relates to the
188 testing process.
- 189 K. Dispensaries can be on the same property in HTCD as a
190 cultivation facility, a Medical Marijuana-Infused Products
191 Manufacturing Facility or a Medical Marijuana Testing Facility
192 but are not permitted to be within the same building as any
193 other marijuana related use.
- 194 L. Security Plans. Medical Marijuana Cultivation Facility, Medical
195 Marijuana Testing Facility, Medical Marijuana-Infused Products

196 Manufacturing Facility or Medical Marijuana Dispensary Facility
197 shall provide adequate security on the premises including, but
198 not limited to, the following:

- 199 1. Surveillance. Security surveillance cameras installed
200 to monitor each entrance to the Facility along with
201 the interior and exterior of the premises to
202 discourage and to facilitate the reporting and
203 investigation of criminal acts and nuisance activities
204 occurring at the premises. Security video shall be
205 preserved for at least ninety (90) days, and be made
206 available to law enforcement officers upon demand.
- 207 2. Inventory. All salable inventory of marijuana must be
208 kept and stored in a secured, locked manner.
- 209 3. Safe. A locking safe or secure vault permanently
210 affixed or built into the premises to store any
211 currency on site.
- 212 4. Alarm System. Professionally monitored robbery
213 alarm and burglary alarm systems shall be installed
214 and maintained in good working condition within the
215 Facility at all times.
- 216 5. Emergency Contact. Each Facility shall provide the
217 chief of police with the name, cellular telephone
218 number, electronic mail address, and facsimile
219 number of an on-site Facility employee to whom the
220 City may provide notice of any operating problems
221 associated with the Facility. It shall be the
222 responsibility of the Licensee to keep up to date the
223 contact information of the Facility employee.

224 M. Operating Plans. As a condition of processing of a business
225 license application, a Facility operator shall provide at the
226 time of filing the business license application a detailed
227 operations plan and, upon issuance of a license, shall
228 operate the Facility in accordance with the plan. Such plan
229 shall include:

- 230 1. Floor Plan. A plan showing the layout of the Facility
231 and the principal uses of the floor area depicted. A
232 Medical Marijuana Dispensary Facility shall have a
233 lobby waiting area at the entrance to the center to
234 receive clients, and a separate and secure designated
235 area for dispensing medical marijuana to qualified
236 patients or designated primary caregivers. The

237 primary entrance of any stand-alone facility shall be
238 located and maintained clear of barriers, landscaping
239 and similar obstructions so that it is clearly visible
240 from public streets, sidewalks or site driveways. All
241 storage areas shall be shown and labeled.
242 2. Odor Controls. A Facility shall provide a plan for the
243 mitigation and control of odors and other
244 environmental impacts which may emanate from a
245 Facility. Such plan shall describe the ventilation
246 system for the premises. Appropriate ventilation
247 systems to prevent any odor of marijuana or fumes
248 from leaving the premises of a Facility or other
249 changes to a Facility may be required to abate a
250 public nuisance.

251 N. Signage.

- 252 1. A sign for a medical marijuana cultivation facility,
253 medical marijuana dispensary facility, medical
254 marijuana-infused products manufacturing facility,
255 or medical marijuana testing facility shall comply
256 with the requirements of Chapter 410 of this Code, or
257 any ordinance enacted hereafter regulating signs.
- 258 2. A sign for a medical marijuana cultivation facility,
259 medical marijuana dispensary facility, medical
260 marijuana-infused products manufacturing facility,
261 or medical marijuana testing facility shall be located
262 on the same premises as the facility.

263 O. Each Facility shall at all times possess a current City
264 business license. By obtaining a City business license, the
265 Facility Licensee irrevocably consents to the immediate
266 closure and cessation of operation of the Facility in addition
267 to all other penalties or remedies available by law for the
268 failure to possess a current City business license.

269 P. It shall be unlawful for any person to distribute, transmit,
270 give, dispense or otherwise provide medical marijuana as a
271 home occupation.

272 Q. No medical marijuana cultivation facility, medical
273 marijuana dispensary facility, medical marijuana-infused
274 products manufacturing facility, or medical marijuana
275 testing facility shall be operated within the City without a
276 valid license issued by the Missouri Department of Health
277 and Senior Services. No marijuana or marijuana-infused

278 products shall be acquired, certified, cultivated, delivered,
279 manufactured, processed, sold, stored, tested, or
280 transported within the City, except by persons or entities
281 licensed for such purposes by the Missouri Department of
282 Health and Senior Services.

283 R. Application Review Process:

- 284 1. Site review permit. This preliminary permit reviews
285 the proposed marijuana related use for compliance
286 with the City’s zoning and location standards prior to
287 issuance of State license. A draft of proposed
288 security and floor plans should also be provided. Site
289 review approval shall expire, and be of no effect, one
290 (1) year after the date of issuance thereof.
- 291 2. Business license. Once State licensing has been
292 received, the business license shall include all
293 relevant State approvals and approved operating
294 plans and security plans.

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296 **Section Five.** Section 400.480 of Article XII: Off-Street Automobile
297 Parking Space Requirements of Title IV of the Municipal Code is hereby
298 amended to read as follows: (those subsections not specifically set
299 forth herein are not altered or amended in any way and, therefore,
300 remain in full force and effect).

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302 Tabled 400.480 Off-street parking space requirements:

303

Land Use

Number of Spaces

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Requires

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Commercial Uses

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307 Medical Marijuana dispensary facility

One (1) space per 300
square feet of retail
plus one (1) space per
400 square feet of
office

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Industrial Uses

Medical marijuana cultivation facility One (1) space per
 5,000 square feet of
 grow and process area
 plus one (1) space per
 400 square feet of
 office

Section Six. Appendix A of the Zoning Code of the City of O’Fallon, Missouri is amended as follows (those categories not specifically set forth herein are not altered or amended in any way and, therefore, remain in full force and effect).

Land Use Category	R-1	R1 A	R-2	R-3	R-4	R-5	C-O	C-1	C-2	C-3	I1	I2	AG	P R
Marijuana cultivation facility (indoor only)											P	P		
Medical marijuana dispensary facility									P	P				
Medical marijuana-infused products manufacturing facility											P	P		
Medical marijuana testing facility											P	P		

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Section Seven.

Appendix “B”: Schedule of Fees, Costs and Expenses of the Zoning Code of the City of O’Fallon, MO is hereby amended.

- Site review permit (Marijuana related use): \$150.00

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- Business license (Marijuana related use): \$150.00 plus the \$50.00 fee as described in Section 605.030

Section Eight. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

Section Nine. The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered in the process of re-codifying or servicing the City’s Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

Section Ten. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

PASSED BY THE CITY COUNCIL FOR THE CITY OF O’FALLON, MISSOURI, THIS _____ DAY OF _____, 2019

Presiding Officer

Attest:

Pamela L. Clement, City Clerk

APPROVED BY THE MAYOR ON THIS _____ DAY OF _____, 2019

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Attest:

Bill Hennessy, Mayor

Pamela L. Clement, City Clerk

Approved as to Form:

Kevin M. O'Keefe, City Attorney