

Review by P&Z: 6/26/2024

Sponsor: _____

First Reading: ~~8/5/24~~ 8/19/24

Ord. No: 009-24

AN ORDINANCE AMENDING APPENDIX A (ZONING) OF THE TOWN CODE OF THE TOWN OF SMYRNA TO REGULATE THE LOCATION OF MARIJUANA ESTABLISHMENTS IN THE TOWN OF SMYRNA

WHEREAS, the Smyrna Town Council has enacted zoning regulations in the Town of Smyrna as authorized pursuant to 22 *Del. C.* Chapter 3 and Section 4.2.37 of the Town Charter;

WHEREAS, the General Assembly of the State of Delaware adopted the Delaware Marijuana Control Act (“The Act”), legalizing the use of marijuana for individuals 21 years of age or older;

WHEREAS, the General Assembly authorized municipalities to adopt regulations prohibiting the operation of marijuana establishments within the municipality or to adopt regulations “governing the time, place, manner, and number of marijuana establishment operations” within the municipality;

WHEREAS, the Town Council of the Town of Smyrna has determined that the location of marijuana establishments within the Town should be regulated.

WHEREAS, the Planning Commission considered this ordinance at a duly noticed meeting held on June 26, 2024, and recommended to the Town Council that this ordinance be approved;

WHEREAS, the Town Council held a public hearing on August 5, 2024, notice for which was published in the Delaware State News on 07/07/2024 and posted at Town Hall on 8/19/2024, at which time all interested members of the public were given an opportunity to comment on this ordinance; and

WHEREAS, the Town Council finds that amending the Zoning Code to regulate the location of marijuana establishments is in the best interest of the public health, safety, and welfare.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that Appendix A (Zoning) of the Town Code of the Town of Smyrna be and hereby is amended as follows:

Section 1. Amend Section 5 (District Regulations), Subsection 10 (Highway Commercial (HC) District), by making insertions as shown by underline and deletions as shown by strikethrough as follows:

10. *Highway commercial district HC.* The highway commercial district is intended to meet commercial and service needs which can best be satisfied by establishments located adjacent to a main highway. The requirements of the local and regional population as well as those of travelers will be served within this district.

a. *[Permitted uses.]* The following uses are permitted:

* * *

(33) Financial loan processing and call centers

(34) Marijuana retail stores

Section 2. Amend Section 5 (District Regulations), Subsection 14 (Industrial/office/research park district (IORP)), by making insertions as shown by underline and deletions as shown by strikethrough as follows:

14. *Industrial/office/research park district.*

* * *

(9) (Uses permitted as conditional uses.) The following uses are permitted only if approved as a conditional use pursuant to sections 6.15, 6.16 and 6.18 of this ordinance:

* * *

(9) Registered compassion centers and registered safety compliance facilities, ~~as defined in 16 Del. C. Chapter 49A "The Delaware Medical Marijuana Act,"~~ provided that:

a. All regulations found in 16 Del. C. Chapter 49A and Title 16 of the Delaware Administrative Code, as either may from time to time hereafter be amended or in accordance with any other existing or future corresponding provisions of law, are fully complied with, and all permits and approvals required by the same are obtained and remain in full force and effect. All terms used in this subsection shall have the same definitions as found in 16 Del. C. Chapter 49A and/or Title 16 of the Delaware Administrative Code.

Section 3. Amend Section 5 (District Regulations), Subsection 14 (Industrial/office/research park district (IORP)), by making insertions as shown by underline and deletions as shown by strikethrough as follows:

14. *Industrial/office/research park district.*

a. *[Permitted uses.]* The following uses are permitted: No building or premises shall be used and no building or part of a building shall be erected, which is arranged, intended or designed to be used, in whole or in part, for any purpose, except the following, and in accordance with performance standards of section 6 and subject to site development plan approval as set forth in section VII of the Town of Smyrna subdivision ordinance:

(1) Manufacturing, assembling, converting, altering, finishing, cleaning, cooking, baking or any other type of manufacturing or industrial processing of any goods, materials, products, instruments, appliances and devices, provided that the fuel used shall be oil, gas or electricity; together with incidental clinics, cafeterias and recreational facilities for the exclusive use of employees of the concern engaged in such undertaking.

(1.5) Marijuana cultivation facilities, marijuana product manufacturing facilities, and marijuana testing facilities.

Section 4. Amend Section 5 (District Regulations), Subsection 17 (Shopping Center (SC) District), by making insertions as shown by underline and deletions as shown by strikethrough as follows:

17. *Shopping center (SC).*

- A. *[Declaration of legislative intent.]* This district is intended to provide for and to encourage grouping of commercial establishments on any lot or parcel (or on any group of two or more substantially contiguous lots or parcels) containing a minimum total lot area of not less than five acres as shown and identified on a proposed site plan (hereinafter "shopping center"; "development"; or "shopping center development") for safer access, greater convenience, and improved aesthetics for shopping areas in the community. The frontage of the development shall be of sufficient width that safe and efficient access to the shopping center can be adequately spaced from accesses to adjacent public streets.
- B. *[Permitted uses.]* The following uses are permitted: No building or premises shall be used and no building or part of a building shall be erected which is arranged, intended or designed to be used, in whole or in part, for any purpose except the following and in accordance with performance standards of section 6 and subject to the site development plan approval as set forth in section 7.5 of the Smyrna zoning ordinance:

(1) Bowling alleys.

* * *

(12) Marijuana retail stores

Section 5. Amend Section 5 (District Regulations), Subsection 21 (Corridor Commercial (CCM) District), by making insertions as shown by underline and deletions as shown by strikethrough as follows:

- q. *Land use.* Land uses permitted in the corridor commercial (CCM) zoning district shall be those uses outlined in the land use table located below. Any use not listed herein shall be expressly prohibited.

Land Use	CCM Zoning District
* * *	
Retail Trade	
Adult Entertainment Uses	—
Bars/Taverns	P
Body Art Establishments	CU
Breweries, Distilleries, and Wineries	P
Drive-through Retail	P
Drive-through Service	P
Farmers Markets	P
Flea Markets	SE
General Retail Business	P
Grocery and Big Box Department/Service Stores	P
<u>Liquor stores</u>	<u>P</u>
<u>Marijuana retail stores</u>	<u>P</u>
Restaurant or Café	P

Section 6. Amend Section 19 (Definitions) by making insertions as shown by underline and deletions as shown by strikethrough as follows:

Section 19. – Definitions.

For the purposes of this ordinance, certain terms or words used herein shall be interpreted as follows:

* * *

Major site plan. Any nonresidential use including new construction or addition which exceeds 3,500 sq. ft. shall require plans as described in section 7.5 of this ordinance. Review of site plans will be conducted by the planning commission at a regularly scheduled meeting.

Marijuana. All parts of the plant *Cannabis sativa L.*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. Marijuana does not include:

1. The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.
2. Products approved by the US Food and Drug Administration.
3. Industrial hemp, defined as all parts of the plant *Cannabis sativa L.*, and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.

Marijuana cultivation facility. An establishment operated by an entity licensed by the State of Delaware to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers. A marijuana cultivation facility may not produce marijuana concentrates, tinctures, extracts, or other marijuana products.

Marijuana establishment. A marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, marijuana retail store, registered compassion center, or registered safety compliance facility, as those terms are defined herein.

Marijuana product manufacturing facility. An establishment operated by an entity licensed by the State of Delaware to do the following: purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and retail marijuana stores, but not to consumers.

Marijuana retail store. An establishment operated by an entity licensed by the State of Delaware to purchase marijuana from marijuana cultivation facilities; to purchase marijuana and marijuana products from marijuana product manufacturing facilities; and to sell marijuana and marijuana products to consumers.

Marijuana testing facility. An establishment operated by an entity licensed by the State of Delaware to test marijuana for potency and contaminants.

* * *

Professional office. The office of a person engaged in any occupation, vocation or calling, not

purely commercial, mechanical or agricultural, in which a professed knowledge or skill in some department of science of learning often gained after intensive academic preparation is used by its practical application to the affairs of others, either by advising or guiding them in serving their interest or welfare through the practice of an act founded thereon. By way of example, and not limitation, a "professional office" would be an office in which professional services are rendered by licensed architects, certified or other public accountants, chiropractors, chiropractors, doctors of dentistry, doctors of medicine, optometrists, osteopaths, professional engineers and attorneys at law.

Registered compassion center. An establishment operated by a not-for-profit entity registered with the State of Delaware pursuant to 16 Del. C. § 4914A that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, or dispenses marijuana, paraphernalia, or related supplies and educational materials to registered qualifying patients who have designated the dispenser to cultivate marijuana for their medical use and the registered designated caregivers of these patients.

Registered safety compliance facility. An establishment operated by a nonprofit entity registered under 16 Del. C. § 4915A by the State of Delaware to provide 1 or more of the following services: testing marijuana produced for medical use or under Chapter 13 of Title 4 for potency and contaminants; and training cardholders, compassion center agents, and owners and employees of entities operating under Chapter 13 of Title 4 of the Delaware Code. The training may include, but need not be limited to, information related to 1 or more of the following:

- (a) The safe and efficient cultivation, harvesting, packaging, labeling, and distribution of marijuana;
- (b) Security and inventory accountability procedures; and
- (c) Up-to-date scientific and medical research findings related to medical marijuana.

Section 7. Amend Section 5 (District Regulations), Subsection 23 (Use and Bulk Standards Tables), by updating Table 3 (Non-residential Use and Bulk Standards Table (I & R, LM, LO, & IORP Districts)) and Table 4 (Non-residential Use and Bulk Standards Table (CC, HC, & LC Districts)) to reflect the additional uses permitted in the IORP and HC zoning districts pursuant to the adoption of this Ordinance.

Section 8. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council's intent.

Section 9. Effective Date. This Ordinance shall become effective immediately upon its adoption by the Town Council.

SYNOPSIS

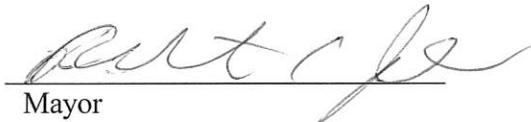
This ordinance amends the Zoning Code to allow marijuana retail stores in the HC, CCM, and SC zoning districts. This ordinance amends the IORP zoning district to allow as by right uses marijuana cultivation facilities, marijuana product manufacturing facilities, and marijuana testing facilities. Lastly, this ordinance defines the different marijuana establishments referenced in the Zoning Code.

This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on Oct 19, 2024.

ATTEST:



Council Secretary



Mayor

This shall certify that the title and synopsis of this Ordinance was published in the "Delaware State News" on 07/07/2024, 2024 and posted at the Town Hall on October 19, 2024.

So Certifies:



Town Clerk