

BILL NO. 2022-206

ORDINANCE NO. 11700

**AN ORDINANCE OF THE CITY OF SEDALIA AMENDING THE CITY CODE REGARDING MARIJUANA.**

**WHEREAS**, Effective December 6<sup>th</sup>, 2018, the Missouri Constitution was amended by adding Article XIV, Section 1, pertaining to medical marijuana; and

**WHEREAS**, effective December 8<sup>th</sup>, 2022, the Missouri Constitution was further amended by adding Article XIV, Section 2, regarding recreational marijuana;

**WHEREAS**, it is necessary to amend the ordinances of this City to conform to the provisions of the Constitution.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEDALIA, MISSOURI AS FOLLOWS:**

**SECTION 1:** The Code of the City of Sedalia is hereby amended by repealing Chapter 12, Article VIII and enacting one new Article in lieu thereof to read as follows:

**“ARTICLE VIII. MARIJUANA**

**Sec. 12-600. Definitions.**

- A. Any term not specifically defined in this Chapter shall have the definition set forth in Article XIV of the Constitution, if any.
- B. Specific Definitions. Unless the context indicates otherwise, the following terms shall have the meaning set forth herein.
  - (1) "Administer" means the direct application of marijuana to a Qualifying Patient or by way of any of the following methods:
    - a. Ingestion of capsules, teas, oils, and other marijuana-infused products;
    - b. Vaporization or smoking of dried flowers, buds, plant material, extracts, or oils;
    - c. Application of ointments or balms;
    - d. Transdermal patches and suppositories;
    - e. Consuming marijuana-infused food products.

- (2) "Church" means a permanent building primarily and regularly used as a place of religious worship.
- (3) Enclosed, Locked Facility
- a. An indoor stationary closet, room, garage, greenhouse, or other comparable fully enclosed space equipped with locks or other functioning security devices that permit access only to the qualifying patient(s) or primary caregiver(s) who have informed the department that this is the space where they will cultivate marijuana; or
  - b. An outdoor stationary structure:
    - i. That is enclosed on all sides, except at the base, by chain-link fencing, wooden slats, or a similar material that is anchored, attached, or affixed to the ground and that cannot be accessed from the top;
    - ii. In which the plants are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure at any level; and
  - c. That is equipped with locks or other security devices that restrict access to only the qualifying patient(s) or primary caregiver(s) who have informed the department that this is the space where they will cultivate marijuana.
- (4) "Comprehensive Facility" means a comprehensive marijuana cultivation facility, a comprehensive marijuana dispensary facility, or a comprehensive marijuana-infused products manufacturing facility.
- (5) "Comprehensive Marijuana Cultivation Facility" means a facility licensed by the department to acquire, cultivate, process, package, store on-site or off-site, transport to or from, and sell marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones) to a medical facility, comprehensive facility, or marijuana testing facility. A comprehensive marijuana cultivation facility need not segregate or account for its marijuana products as either non-medical marijuana or medical marijuana. A comprehensive marijuana cultivation facility's authority to process marijuana shall include the creation of prerolls, but shall not include the manufacture of marijuana-infused products.
- (6) "Comprehensive Marijuana Dispensary Facility" means a facility licensed by the department to acquire, process, package, store on-site or off-site, sell, transport to or from, and deliver marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones), marijuana-infused products, and drug paraphernalia used to administer marijuana as provided for in this section to a qualifying patient or primary caregiver, as those terms are defined in section I of this Article, or to a consumer, anywhere

on the licensed property or to any address as directed by the patient, primary caregiver, or consumer and consistent with the limitations of this Article and as otherwise allowed by law, to a comprehensive facility, a marijuana testing facility, or a medical facility. Comprehensive dispensary facilities may receive transaction orders at the dispensary directly from the consumer in person, by phone, or via the internet including from a third party. A comprehensive marijuana dispensary facility need not segregate or account for its marijuana products as either non-medical marijuana or medical marijuana, but shall collect all appropriate tangible personal property sales tax for each sale, as set forth in this Article and provided for by general or local law. A comprehensive marijuana dispensary facility's authority to process marijuana shall include the creation of prerolls.

- (7) “Comprehensive Marijuana-Infused Products Manufacturing Facility” means a facility licensed by the department to acquire, process, package, store, manufacture, transport to or from a medical facility, comprehensive facility, or marijuana testing facility, and sell marijuana-infused products, prerolls, and infused prerolls to a marijuana dispensary facility, a marijuana testing facility, or another marijuana-infused products manufacturing facility. A comprehensive marijuana-infused products manufacturing facility need not segregate or account for its marijuana products as either non-medical marijuana or medical marijuana.
- (8) “Constitution” shall mean the Constitution of the State of Missouri.
- (9) “Consumer” means a person who is at least twenty-one years of age.
- (10) “Consumption” means to smoke or ingest marijuana by any means.
- (11) “Daycare” means a child-care facility, as defined by section 215.201, RSMo., or successor provisions, that is licensed by the state of Missouri.
- (12) “Department” means the Department of Health and Senior Services or its successor agency.
- (13) “Directly” For the purpose of this chapter the term “directly” shall mean the shortest possible legally walkable practicable route from the Marijuana Facility to the permitted destination or destinations, without any voluntary detours or additional stops.
- (14) “Fine” when used herein shall mean a monetary fine imposed by the Municipal Court for this City.
- (15) “Marijuana” or “Marihuana” means 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.

- (16) “Marijuana Business” means any facility licensed by the Department of Health and Senior Services under the authority granted by Article XIV of the Constitution.
- (17) “Marijuana Dispensary” means either a Medical Marijuana Dispensary or a Comprehensive Marijuana Dispensary as those terms are defined in Art. XIV of the constitution.
- (18) “Marijuana Facility” shall mean a medical marijuana facility or a comprehensive facility as that term is defined by Art. XIV Section 2 of the Constitution.
- (19) “Marijuana-Infused Products” means 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.
- (20) “Medical Marijuana Cultivation Facility” means a facility licensed by the Department, 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 and shall also mean a Comprehensive Marijuana Cultivation Facility, as that term is defined in Article XIV of the Constitution.
- (21) “Medical Marijuana Dispensary Facility” or “Dispensary” means a facility licensed by the Department, to acquire, store, sell, transport, and deliver marijuana, marijuana-infused products, and drug paraphernalia used to administer marijuana as provided for in this section 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.
- (22) “Medical Marijuana-Infused Products Manufacturing Facility” means a facility licensed by the Department, to acquire, store, manufacture, transport, and sell marijuana-infused products to a Medical Marijuana Dispensary Facility, a Medical Marijuana Testing Facility, or another Medical Marijuana-Infused Products Manufacturing Facility.
- (23) “Primary caregiver” means a person designated as such by the Department.
- (24) “Qualifying Patient” means a person designated as such by the Department.

- (25) “Then existing” shall mean any school, child day-care center, or church with a written building permit from the city to be constructed, or under construction, or completed and in use at the time a business regulated under this Chapter first applies for either zoning or a building permit, whichever comes first.

**Sec. 12-605 Business License; No additional licenses.**

Marijuana Businesses shall be required to have a city business license as required by this Chapter but shall not be required to have any other city-issued license.

**Sec. 12-610 Marijuana Dispensaries**

- A. Marijuana Dispensaries shall not be open to the public or make any sales between the hours of 8:00 p.m. and 8:00 a.m.
- B. No Marijuana, of any type, may be consumed on the premises of a Marijuana Dispensary, nor shall the licensee permit such consumption.
- C. Any Medical Marijuana Dispensary shall require any customer to display the customer's permit card from the Department of Health and Senior Services or other proof of eligibility at the time of each purchase.
- D. No person under the age of eighteen years old shall be allowed into a Medical Marijuana Dispensary; except that a Qualifying Patient who is under the age of eighteen years but who has been emancipated by a court order and a Qualifying Patient, under the age of eighteen years when accompanied by the Qualifying Patient's parent or guardian. No person under the age of 21 shall be allowed into a Marijuana Dispensary, except that a Qualifying Patient who is under the age of 21 years but who has been emancipated by a court order and a Qualifying Patient, under the age of 21 years when accompanied by the Qualifying Patient's parent or guardian.
- E. A Marijuana Dispensary shall have displayed its state-issued license and the city-issued license pursuant to this section visible to the public at all times.
- F. Each marijuana dispensary shall be operated from a permanent and fixed location. No marijuana dispensary shall be permitted to operate from a moveable, mobile, or transitory location. This subsection shall not prevent the physical delivery of marijuana to a customer, patient, or the patient's primary caregiver at a location off of the premises of the permittee's marijuana dispensary, to the extent so allowed by law, if:
  - (1) the marijuana was lawfully purchased;
  - (2) the marijuana is delivered only by the permittee or an employee of the permittee;

- (3) the marijuana is delivered only by the use of a motor vehicle, bicycle, or other lawful means of transportation; marijuana may not be delivered by drone or any remotely operated vehicle, or by any self-navigating vehicle unless a human occupies such self-navigating vehicle.
- G. Marijuana Accessories (Paraphernalia) designed or intended for use in consuming marijuana may be sold at a marijuana dispensary.
- H. A Marijuana Dispensary shall provide adequate security on the premises of the marijuana dispensary including, but not limited to, the following:
  - (1) Security surveillance cameras installed to monitor the main entrance along with the interior and exterior of the premises to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises, and security video shall be preserved for at least 72 hours by the permittee;
  - (2) Alarm systems that are professionally monitored and maintained in good working conditions;
  - (3) A locking safe permanently affixed to the premises, or a locked secure storage room, that is suitable for storage of all of the saleable inventory of marijuana if marijuana is to be stored overnight on the premises; and
  - (4) Exterior lighting that illuminates the exterior walls of the business and is compliant with the City Code.
- I. Location.
  - (1) A Dispensary may not be located within 1000 legally walkable feet of a then existing elementary or secondary school, state-licensed child day-care center, or church (see § Sec. Sec. 12-600 B(25) for the definition of ‘then existing’).
  - (2) In the case of a freestanding facility, the distance between the facility and the school, daycare, or church shall be measured from the external wall of the facility structure closest in proximity to the school, daycare, or church to the closest point of the property line of the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility. In the case of a facility that is part of a larger structure, such as an office building or strip mall, the distance between the facility and the school, daycare, or church shall be measured from the property line of the school, daycare, or church to the facility's entrance or exit closest in proximity to the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility. Measurements shall be made along the shortest path between the demarcation points that can be lawfully traveled by foot.

- (3) The City Council may reduce this distance by resolution if an applicant shows good cause for the same. The determination of what constitutes good cause shall be at the sole discretion of the City Council.

**Sec. 12-615 Offsite Storage Facilities.**

Marijuana Dispensaries may operate an Offsite Storage Facility for the storage of products and inventory. A single Offsite Storage Facility may only be used by a single entity licensed as a Marijuana Dispensary. An Offsite Storage Facility shall not be open to the public. An Offsite Storage Facility shall comply with the same requirements of a dispensary in regard to location, security, and odor control.

**Sec. 12-620 Marijuana-Infused Products Manufacturing Facility**

- A. No permit shall be issued or renewed for a Marijuana-Infused Products Manufacturing Facility that does not meet the standards of this section.
- B. Distance Requirement. No Marijuana-Infused Products Manufacturing Facility using any combustible gases or CO<sub>2</sub> in the extraction process shall be located within 1000 legally walkable feet of a then existing elementary or secondary school, licensed child daycare center, or church. Any other Marijuana-Infused Products Manufacturing Facility may be located in any location where a Medical Marijuana Dispensary may be located as detailed above. Measurements shall be in a method consistent with the city's existing liquor license measurement standard. The City Council may reduce this distance by resolution if an applicant shows good cause for the same. The determination of what constitutes good cause shall be at the sole discretion of the City Council.
- C. Outdoor Operations or Storage. All operations and all storage of materials, products, or equipment shall be within a fully secured area inside the building structure or outdoors on the property in an area enclosed by a fence with razor wire at least ten (10) feet in height, not including the razor wire or such other alternative security measures approved by the City Council.
- D. Onsite Usage Prohibited. No marijuana may be smoked, ingested, or otherwise consumed on the premises of any Marijuana-Infused Products Manufacturing Facility at any time.
- E. Display of Licenses Required. The Marijuana-Infused Products Manufacturing Facility license issued by the State of Missouri, along with the City issued license pursuant to this chapter, shall be displayed in a prominent place in plain view near the front desk of the facility.
- F. The City may revoke the business license of the facility for violations of this section.

## **Sec. 12-625 Marijuana Cultivation and Testing Facilities**

- A. No permit shall be issued or renewed for a Marijuana-Cultivation or Testing Facility that does not meet the standards of this section.
- B. Distance Requirement.
  - (1) No Marijuana Cultivation Facility shall be located within 1000 legally walkable feet of a then existing elementary or secondary school, state-licensed child day-care center, or church (see § Sec. Sec. 12-600 B(25) for the definition of 'then existing').
  - (2) In the case of a freestanding facility, the distance between the facility and the school, daycare, or church shall be measured from the external wall of the facility structure closest in proximity to the school, daycare, or church to the closest point of the property line of the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility. In the case of a facility that is part of a larger structure, such as an office building or strip mall, the distance between the facility and the school, daycare, or church shall be measured from the property line of the school, daycare, or church to the facility's entrance or exit closest in proximity to the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility. Measurements shall be made along the shortest path between the demarcation points that can be lawfully traveled by foot.
  - (3) The City Council may reduce this distance by resolution if an applicant shows good cause for the same. The determination of what constitutes good cause shall be at the sole discretion of the City Council.
- C. Outdoor Operations or Storage. All operations and all storage of materials, products, or equipment shall be within a fully secured area inside the building structure or outdoors on the property in an area enclosed by a fence with razor wire at least ten (10) feet in height, not including the razor wire or such other alternative security measures approved by the City Council.
- D. Onsite Usage Prohibited. No marijuana may be smoked, ingested, or otherwise consumed on the premises of any Marijuana Cultivation Facility at any time.
- E. Display of Licenses Required. The Marijuana Cultivation Facility license issued by the State of Missouri, along with the City issued license pursuant to this chapter, shall be displayed in a prominent place in plain view near the front entrance of the facility.



- F. The City may revoke the business license of the facility for violations of this section after notice and an opportunity for a hearing.

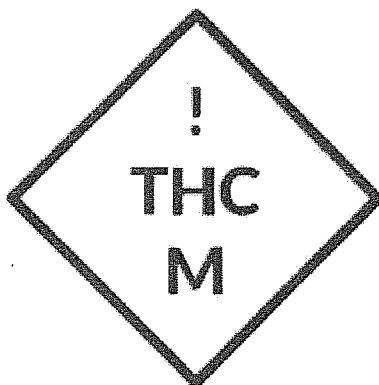
**Sec. 12-630 Disposal of Marijuana**

No person shall dispose of Marijuana or Marijuana-Infused products in an unsecured waste receptacle not in possession and control of the Licensee and designed to prohibit unauthorized access.

**Sec. 12-635 Edible Marijuana, Labeling Requirements.**

- A. No edible marijuana-infused product, packaging, or logo sold in this City pursuant to Article XIV of the Missouri Constitution shall be designed in the shape of a human, animal, or fruit, including realistic, artistic, caricature, or cartoon renderings. However, geometric shapes, including, but not limited to, circles, squares, rectangles, and triangles shall be permitted.
- B. Each package, or packages with or within a package, containing an edible marijuana-infused product with ten or more milligrams of tetrahydrocannabinol (THC) shall be stamped with a universal symbol for such products, which shall consist of the following:
- (1) A diamond containing the letters "THC";
  - (2) The letter "M" located under the "THC" within the diamond, to signify that the product is for medical purposes; and
  - (3) The number of milligrams of THC in the package.

The universal symbol shall be placed on the front of the package in red and white print and shall measure one-half inch by one-half inch from point to point."



**SECTION 2:** Chapter 10 of the City Code is hereby amended by adding one new section to read as follows:

**“Sec. 10-385 Marijuana Odors and Smoke Declared to be a Nuisance.**

Any marijuana facility authorized by Article XIV of the Missouri Constitution which generates marijuana smoke or odor that is capable of being detected by a person of ordinary senses (including but not limited to any police officer) beyond the property line of the facility is hereby declared to be a nuisance. In addition to any other remedy provided for the abatement of nuisances, the City may revoke the business license of any such facility for violation of this section after notice and the opportunity for a hearing. Violation of this section shall also be punishable by a fine, not to exceed \$500.”

**SECTION 3:** Chapter 36 of the City Code is hereby amended by repealing Article VII in its entirety and enacting a new Article VII, to read as follows:

**“Sec. 36-234 Definitions.**

As used in this Article, the following terms shall mean:

**ADMINISTER**

To apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

1. A practitioner (or, in his/her presence, by his/her authorized agent); or
2. The patient or research subject at the direction and in the presence of the practitioner.

**CONTROLLED SUBSTANCE**

A drug, substance, or immediate precursor in Schedules I through V listed in Chapter 195, RSMo.

**DELIVER or DELIVERY**

The actual, constructive, or attempted transfer from one (1) person to another of drug paraphernalia or of a controlled substance, or an imitation controlled substance, whether or not there is an agency relationship, and includes a sale.

**DEPRESSANT OR STIMULANT SUBSTANCE**

1. A drug containing any quantity of barbituric acid or any of the salts of barbituric acid or any derivative of barbituric acid which has been designated by the United States Secretary of Health and Human Services as habit forming under 21 U.S.C. Section 352(d);
2. A drug containing any quantity of:
  - a. Amphetamine or any of its isomers;
  - b. Any salt of amphetamine or any salt of an isomer of amphetamine; or

c. Any substance the United States Attorney General, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system;

3. Lysergic acid diethylamide; or

4. Any drug containing any quantity of a substance that the United States Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

### **DISPENSE**

To deliver a narcotic or controlled dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery. "Dispenser" means a practitioner who dispenses.

### **DISTRIBUTE**

To deliver other than by administering or dispensing a controlled substance.

### **DRUG PARAPHERNALIA OR PARAPHERNALIA**

1. All equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or an imitation controlled substance in violation of Sections 195.005 to 195.425, RSMo. but not including Marijuana Accessories. It includes, but is not limited to:

a. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

b. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances or imitation controlled substances;

c. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance or an imitation controlled substance;

d. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances or imitation controlled substances;

e. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances or imitation controlled substances;

- f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances or imitation controlled substances;
- g. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances or imitation controlled substances;
- h. Reserved.
- i. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances or imitation controlled substances;
- j. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or imitation controlled substances;
- k. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances or imitation controlled substances into the human body;
- l. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing, cocaine, hashish, or hashish oil into the human body, except those designed or intended for use with marijuana, such as:
  - (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - (2) Water pipes;
  - (3) Carburetion tubes and devices;
  - (4) Smoking and carburetion masks;
  - (5) Roach clips, meaning objects used to hold burning material, except those for use with marijuana, that has become too small or too short to be held in the hand;
  - (6) Miniature cocaine spoons and cocaine vials;
  - (7) Chamber pipes;
  - (8) Carburetor pipes;
  - (9) Electric pipes;
  - (10) Air-driven pipes;
  - (11) Chillums;
  - (12) Bongs;
  - (13) Ice pipes or chillers;
  - (14) Substances used, intended for use, or designed for use in the manufacture of a controlled substance.
- 2. In determining whether an object, product, substance, or material is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- a. Statements by an owner or by anyone in control of the object concerning its use;
- b. Prior convictions, if any, of an owner, or of anyone in control of the object, under any State or Federal law relating to any controlled substance or imitation controlled substance;
- c. The proximity of the object, in time and space, to a direct violation of this chapter or Chapter 579, RSMo.;
- d. The proximity of the object to controlled substances or imitation controlled substances;
- e. The existence of any residue of controlled substances or imitation controlled substances on the object;
- f. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he/she knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter or Chapter 579 RSMo.; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter or Chapter 579, RSMo., shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- g. Instructions, oral or written, provided with the object concerning its use;
- h. Descriptive materials accompanying the object which explain or depict its use;
- i. National or local advertising concerning its use;
- j. The manner in which the object is displayed for sale;
- k. Whether the owner or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- l. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- m. The existence and scope of legitimate uses for the object in the community;
- n. Expert testimony concerning its use;
- o. The quantity, form or packaging of the product, substance or material in relation to the quantity, form or packaging associated with any legitimate use for the product, substance or material.

#### **HALLUCINOGENIC SUBSTANCES**

Including lysergic acid diethylamide, mescaline, psilocybin, and various types of methoxyamphetamines.

## **IMITATION CONTROLLED SUBSTANCE**

A substance that is not a controlled substance, which by dosage unit appearance (including color, shape, size, and markings), or by representations made, would lead a reasonable person to believe that the substance is a controlled substance. In determining whether the substance is an imitation controlled substance the court or authority concerned should consider, in addition to all other logically relevant factors, the following:

1. Whether the substance was approved by the Federal Food and Drug Administration for over-the-counter (non-prescription or non-legend) sales and was sold in the Federal Food and Drug Administration-approved package, with the Federal Food and Drug Administration-approved labeling information;
2. Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
3. Whether the substance is packaged in a manner normally used for illicit controlled substances;
4. Prior convictions, if any, of an owner, or anyone in control of the object, under State or Federal law related to controlled substances or fraud;
5. The proximity of the substances to controlled substances;
6. Whether the consideration tendered in exchange for the non-controlled substance substantially exceeds the reasonable value of the substance considering the actual chemical composition of the substance and, where applicable, the price at which over-the-counter substances of like chemical composition sell. An imitation controlled substance does not include a non-controlled substance that was initially introduced in commerce prior to the initial introduction into commerce of the controlled substance that it is alleged to imitate. Furthermore, an imitation controlled substance does not include a placebo or registered investigational drug either of which was manufactured, distributed, possessed, or delivered in the ordinary course of professional practice or research;
7. Stimulants such as amphetamines and methamphetamines;
8. Barbiturates and other depressants such as amobarbital, secobarbital, pentobarbital, phenobarbital, methaqualone, phencyclidine, and diazepam.

## **LICENSE or LICENSED**

Persons required to obtain annual registration as issued by the State Division of Health as provided by Section 195.030, RSMo.

## **MANUFACTURE**

The production, preparation, propagation, compounding, or processing of drug paraphernalia or of a controlled substance, or an imitation controlled substance, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its

container. This term does not include the preparation or compounding of a controlled substance or an imitation controlled substance by an individual for his/her own use or the preparation, compounding, packaging, or labeling of a narcotic or dangerous drug:

1. By a practitioner as an incident to his/her administering or dispensing of a controlled substance or an imitation controlled substance in the course of his/her professional practice; or
2. By a practitioner or by his/her authorized agent under his/her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

## **MARIJUANA**

All parts of the plant genus *Cannabis* in any species or form thereof, including, but not limited to *Cannabis Sativa* L., except industrial hemp, *Cannabis Indica*, *Cannabis Americana*, *Cannabis Ruderalis*, and *Cannabis Gigantea*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, 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.

## **MARIJUANA ACCESSORIES**

Any equipment, product, material, or a combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

## **PERSON**

An individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

## **PHARMACIST**

A licensed pharmacist as defined by the laws of this State, and where the context so requires, the owner of a store or other place of business where controlled substances are compounded or dispensed by a licensed pharmacist; but nothing in this section shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to him/her by the pharmacy laws of this State.

## **PRACTITIONER**

A physician, dentist, optometrist, podiatrist, veterinarian, scientific investigator, pharmacy, hospital or other person licensed, registered or otherwise permitted by this State to distribute, dispense, conduct research with respect to or administer or to use in teaching or chemical analysis, a controlled substance in the course of professional practice or research in this State, or a pharmacy, hospital or other institution licensed,

registered, or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research.

### **PRESCRIPTION**

A written order and, in cases of emergency, a telephone order, issued by a practitioner in good faith in the course of his/her professional practice to a pharmacist for a drug or a particular patient which specifies the date of its issue, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, the directions for use of such drug, and the signature of the practitioner.

### **PRIMARY CAREGIVER**

An individual twenty-one (21) years of age or older who has significant responsibility for managing the well-being of a qualifying patient and who is designated as such on the primary caregiver's application for an identification card under the provisions of Article XIV, Section 1, of the Missouri Constitution or in other written notification to the Missouri Department of Health and Senior Services.

### **PRODUCTION**

Includes the manufacture, planting, cultivation, growing, or harvesting of drug paraphernalia or of a controlled substance or an imitation controlled substance.

### **QUALIFYING PATIENT**

A Missouri resident diagnosed with at least one (1) qualifying medical condition as defined by Article XIV, Section 1, of the Missouri Constitution.

### **WAREHOUSEMAN**

A person who, in the usual course of business, stores drugs for others, is lawfully entitled to possess them and who has no control over the disposition of such drugs except for the purpose of such storage.

### **WHOLESALE**

A person who supplies drug paraphernalia or controlled substances or imitation controlled substances that he himself has not produced or prepared, on official written orders, but not on prescriptions.

## **Sec. 36-236 Possession or Control of a Controlled Substance, Penalty.**

A. A person commits the offense of possession of a controlled substance if he or she knowingly possesses a controlled substance or controlled substance analog, as those terms are defined in Section 195.010, RSMo., except as authorized by Chapter 579, RSMo., Chapter 195, RSMo., but excluding the possession of marijuana.

B. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this Section, it shall not be necessary to include any exception, excuse, proviso, or exemption contained in this Section, Chapter 579, RSMo., or Chapter 195, RSMo., and the burden of proof of any such exception, excuse, proviso or exemption shall be upon the defendant.

## **Sec. 36-238 Unlawful Use of Drug Paraphernalia.**



A. No person shall use or possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or an imitation controlled substance in violation of Sections 195.005 to 195.425, RSMo.

**Sec. 36-240    Illegal Possession and Transportation of Marijuana**

A. No person shall possess in public at any time more than 3 ounces of marijuana, and no person under the age of 21 years may possess, use, ingest, inhale, transport, or deliver with or without consideration, marijuana or marijuana paraphernalia, except that qualified patients under the age of twenty-one years (21) years may possess medical marijuana or paraphernalia to the extent allowed by law.

(1) If the violation of this Section involves three ounces of marijuana or less, the penalty shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00)

B. Illegal Growing:

(1) Possessing, transporting, planting, cultivating, harvesting, drying, processing, or manufacturing more than six flowering marijuana plants, six nonflowering marijuana plants (over fourteen inches tall), and six clones (plants under fourteen inches tall); or

(2) possessing, transporting, planting, cultivating, harvesting, drying, processing, or manufacturing marijuana plants without being registered with the Department of Health and Senior Services for the cultivation of marijuana plants; or

(3) failing to keep in excess of three ounces of such plants in a locked space not visible by normal, unaided vision from a public place; or

C. Growing or possessing such plants by a person under the age of twenty-one years;

D. Sale to Persons Under Twenty-One. No person shall deliver to, transfer to, or sell to persons twenty-one years of age or older marijuana or marijuana paraphernalia;

E. Penalties. Subject to the limitations of this section, a person who possesses not more than twice the amount of marijuana allowed pursuant to this subsection, produces not more than twice the amount of marijuana allowed pursuant to this subsection, delivers without receiving any consideration or remuneration to a person who is at least twenty-one years of age not more than twice the amount of marijuana allowed by this subsection, or possesses with intent to deliver not more than twice the amount of marijuana allowed by this subsection:

- (1) A first violation is subject to an ordinance violation punishable by a fine not exceeding two hundred and fifty dollars and forfeiture of the marijuana;
- (2) A second violation and subsequent violations, is subject to an ordinance violation punishable by a fine not exceeding five hundred dollars and forfeiture of the marijuana;
- (3) A person under twenty-one years of age in violation of this section is subject to a fine not to exceed two hundred and fifty dollars. Any such person shall be provided the option of attending up to eight hours of drug education or counseling in lieu of the fine; and
- (4) In lieu of payment, penalties under this subsection may be satisfied by the performance of community service. The rate of pay-down associated with said service option will be the greater of \$15 or the minimum wage in effect at the time of judgment per hour of service.

**Sec. 36-242. Delivery of simulated drug or simulated controlled substance.**

(a) Definitions. The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Controlled substance and drug have the same meaning as now or hereafter provided by state statute; Simulated drug or simulated controlled substance means either any product which identifies itself by using a common name or slang term, similar name, similar term, or similar mark, imprint, brand, stamp, or impression associated with a controlled substance or drug; or any product which indicates on its label or accompanying promotion material that the product simulates the effect of a controlled substance or drug.

(b) Prohibited. It shall be unlawful for any person to deliver any simulated drug or simulated controlled substance to another person.

**Sec. 36-244. Failure to produce medical marijuana identification.**

Any person who is in possession of medical marijuana shall, immediately upon the request of any law enforcement officer, produce a valid permit issued by the Missouri Department of Health and Senior Services (or its successor) for such possession including, but not limited to, a qualified patient identification card, a qualified caretaker card, or a similar card issued by another state. Any person who fails to produce such a permit upon request shall be guilty of the offense of failure to produce a medical marijuana permit. Conviction of this offense shall be punishable by a fine not to exceed \$50.00.

**Sec. 36-246 Driving Under The Influence Of Marijuana.**

A. A person commits the offense of driving under the influence of marijuana if he/she operates a motor vehicle under the influence of marijuana. Provided however that the presence of marijuana in the defendant's system alone shall not be sufficient proof that the defendant was under the influence of marijuana.

**Sec. 36-248 Residential Cultivation, Medical Marijuana**

A. To the extent allowed by State law, marijuana for medicinal purposes may be cultivated in a residential structure, provided:

- (1) The structure is the primary residence of a Primary Caregiver or Qualifying Patient and the marijuana is grown solely for the use of the Qualifying Patient who resides there or who is under the care of the Primary Caretaker;
- (2) The residence has operating systems to assure that the emission of fumes or vapors connected with the cultivation are not allowed out of the building, or if the residence is in a multifamily building, that such fumes and vapors are not allowed into any other residence;
- (3) No manufacturing of marijuana products shall occur in any residence.
- (4) The cultivation must comply with the security and other requirements of state law and the rules of the Division of Health and Senior Services; and
- (5) the resident has notified the City Clerk, including providing proof of eligibility, on a form provided by the City Clerk, so that law enforcement and code officials will be aware that the cultivation is lawfully taking place.

**Sec. 36-250 Residential Consumption.**

- A. Persons may consume marijuana in their private residence, or in the residence of another with permission, but may not dispense or smoke marijuana in such a manner that the marijuana smoke or odor, exits the residence. If marijuana smoke or odor is capable of being detected by a person of ordinary senses (including but not limited to any police officer) beyond the property line of a single-family home or outside of the owned or leased premises of a duplex or multifamily unit there shall be a rebuttable presumption that this section has been violated. In a multifamily or similar dwelling, marijuana may not be dispensed or consumed in any common area.
- B. Violation of this provision shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

**Sec. 36-252 Motor Vehicle Offenses Involving Marijuana. It shall be unlawful for any person to:**

- A. Operating or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized forms of transport while under the influence of

marijuana. Notwithstanding the foregoing, a conviction of a person who is at least twenty-one years of age for any applicable offenses shall require evidence that the person was in fact under the influence of marijuana at the time the person was in physical control of the motorized form of transport and not solely on the presence of tetrahydrocannabinol (THC) or THC metabolites, or a combination thereof, in the person's system;

- B. Consumption of marijuana while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized forms of transport while it is being operated; or
- C. Smoking marijuana within a motor vehicle, train, or aircraft, motorboat, or another motorized form of transport while it is being operated.

**Sec. 36-254 Possession or Consumption Prohibited on Certain Property.**

If shall be unlawful for a person to be in possession or consumption of marijuana or possession of marijuana accessories on the grounds of a public or private preschool, elementary or secondary school, institution of higher education, in a school bus, or on the grounds of any correctional facility.

**Sec. 36-256 Public Consumption.**

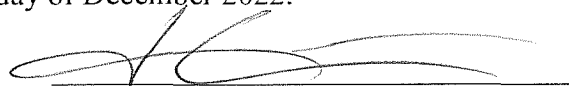
- A. Smoking marijuana in a location where smoking tobacco is prohibited.
- B. Consumption of marijuana in a public place, other than in an area authorized by the City for that purpose is prohibited.
- C. Restaurants serving food that contains marijuana must register with the City and provide notice on all public entrances and on all menus that certain food contains marijuana.
- D. Violation of this Section shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00) for the first offense and not more than Five Hundred Dollars (\$500.00) for subsequent offenses, as well as confiscation of the marijuana.”

**SECTION 4:** The provisions of any ordinance or code section in conflict with any provision of this ordinance are hereby repealed to the extent of such conflict.


**SECTION 5:** This ordinance shall be in full force and effect beginning at 12:01 a.m. on December 8, 2022.

**SECTION 6:** The provisions of this ordinance are severable and if any provision hereof is declared invalid, unconstitutional, or unenforceable, such determination shall not affect the validity of the remainder of this ordinance.

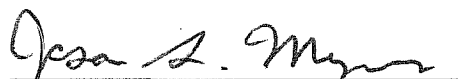
Read two times by title, copies of the proposed ordinance having been made available for public inspection prior to the time the bill is under consideration by the Council and passed by the Council of the City of Sedalia, Missouri this 5<sup>th</sup> day of December 2022.

  
Presiding Officer of the Council

Approved by the Mayor of said City this 5<sup>th</sup> day of December 2022.

  
Andrew L. Dawson, Mayor

ATTEST:

  
Jason S. Myers  
City Clerk