



PLANNING COMMISSION MEETING STAFF REPORT

DATE OF MEETING: November 10, 2020

NAME OF APPLICANT: Midway City

AGENDA ITEM: Code Text Addition of Sections 16.2: Definitions and 16.30 Cannabis Production Establishments

ITEM: 7

Midway City is proposing to adopt new code text to the Midway City Municipal Code. Section 16.2: Definitions and Section 16.30: Cannabis Production Establishments and possibly other sections of code would add regulations regarding cannabis.

BACKGROUND:

The purpose of this item is to adopt zoning regulations regarding “cannabis production establishment” and “medical cannabis pharmacy”. Recently adopted Utah State law now requires cities to adopt zoning locations for both facilities or default provisions will allow the facilities to operate over blanket areas of the City.

Utah Code, Hemp and Cannabinoid Act governs the cultivation, production, and purchase of such products in the State. This code section states that of a municipality or county has not adopted a zoning ordinance designating an industrial zone and an agricultural zone that allow for cannabis production then cannabis production can take place in any industrial zone or agricultural zone.

Furthermore, the Medical Cannabis Act governs the production and purchase of medical cannabis within the state. This code section states that Medical Cannabis Pharmacies, are to be allowed in any zone aside from primary residential zones. The Act further states that municipalities can enact ordinances that govern the time, place, or manner of Medical Cannabis Pharmacy operations; however, they cannot infringe on the time of operations being allowed from 7 a.m. to 10 p.m.

The City has until January 1, 2021 or within 45 days after the day on which the municipality receives a petition for action to act and adopt an ordinance. If the City does not adopt an ordinance based on these criteria, then any agricultural or industrial zone will be permitted zones for production.

ANALYSIS:

The City must decide what zones to allow both facilities or allow them in all zones and locations allowed by State Law.

Regarding cannabis production facilities, Midway does not have an industrial zone, except for the Business and Manufacturing Park, but this zone is currently not in the City limits. Currently the only possibility for this zone is in Midway's growth boundary area in Wasatch County's jurisdiction. This would most likely be the best zone for this use but since it is not in the City limits its currently not an option. The RA-1-43 zone is Midway's only agricultural zone and is an option but there are some reservations with designating this zone as the permitted area for cannabis production. One issue is that production will, most likely, take place in structures which could possibly promote the construction of large structures in this zone. The City's General Plan promotes open space and a rural atmosphere which seem contrary to the possibility of larger structures being built in this zone. Another option is the C-2 zone which is a quasi-manufacturing zone. If a structure is built in this zone, there are architectural guidelines that would be required, and the building would need to be approved under those guidelines. Therefore, the City is recommending the following language to govern this use:

Section 16.2, regarding "Definitions" shall be amended to include the following:

Cannabis Production Establishments. Shall mean a cannabis cultivation facility, a cannabis processing facility, or an independent cannabis testing laboratory, as those terms are defined in §4-41a of the Utah Code. (as amended).

Title 16 of the Midway City Code is hereby expanded, and shall hereafter read as follows:

16.29—Cannabis Production Establishments: Cannabis Production Establishments shall only be allowed as a permitted use in areas zoned B&MP (Business and Manufacturing Park) and C-2 (Commercial), subject to commercial architectural guidelines as established in this code, and shall not be allowed as a temporary and seasonal use. Cannabis Production shall meet all statutory and regulatory requirements, including those contained in §4-41 of the Utah Code.

As for Medical Cannabis Pharmacies, the City will allow them in the commercial zones which include C-2, C-3, and RZ. Retail and clinics are permitted uses in each of these zones and Medical Cannabis Pharmacies would fall under these categories. As mentioned earlier, the City could regulate the time or manner of Medical Cannabis Pharmacy operations; however, we could not infringe on the time of operations being allowed from 7 a.m. to 10 p.m.

POSSIBLE FINDINGS:

- State Code allows cities to decide which zones to allow for cannabis production
- If the City does not designate a zone, then any agricultural or industrial zone will be permitted zones for production
- Medical Cannabis Pharmacies will be allowed in Midway’s three commercial zones C-2, C-3, and RZ

ALTERNATIVE ACTIONS:

1. Recommendation for Approval. This action can be taken if the Planning Commission finds that the proposed language is an acceptable amendment to the City’s Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
2. Continuance. This action can be taken if the Planning Commission would like to continue exploring potential options for the amendment.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again

3. Recommendation for Denial. This action can be taken if the Planning Commission finds that the proposed amendment is not an acceptable revision to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

Effective 9/23/2019

10-9a-528 Cannabis production establishments and medical cannabis pharmacies.

- (1) As used in this section:
 - (a) "Cannabis production establishment" means the same as that term is defined in Section 4-41a-102.
 - (b) "Medical cannabis pharmacy" means the same as that term is defined in Section 26-61a-102.
- (2)
 - (a)
 - (i) A municipality may not regulate a cannabis production establishment in conflict with:
 - (A) Title 4, Chapter 41a, Cannabis Production Establishments, and applicable jurisprudence; and
 - (B) this chapter.
 - (ii) A municipality may not regulate a medical cannabis pharmacy in conflict with:
 - (A) Title 26, Chapter 61a, Utah Medical Cannabis Act, and applicable jurisprudence; and
 - (B) this chapter.
 - (b) The Department of Agriculture and Food has plenary authority to license programs or entities that operate a cannabis production establishment.
 - (c) The Department of Health has plenary authority to license programs or entities that operate a medical cannabis pharmacy.
- (3)
 - (a) Within the time period described in Subsection (3)(b), a municipality shall prepare and adopt a land use regulation, development agreement, or land use decision in accordance with this title and:
 - (i) regarding a cannabis production establishment, Section 4-41a-406; or
 - (ii) regarding a medical cannabis pharmacy, Section 26-61a-507.
 - (b) A municipality shall take the action described in Subsection (3)(a):
 - (i) before January 1, 2021, within 45 days after the day on which the municipality receives a petition for the action; and
 - (ii) after January 1, 2021, in accordance with Subsection 10-9a-509.5(2).

Enacted by Chapter 5, 2019 Special Session 1