

SUBSTITUTE NO. 1 TO ORDINANCE NO. 24-053

AN ORDINANCE TO AMEND CHAPTER 48 OF THE CITY CODE TO PERMIT THE CULTIVATION, MANUFACTURE, TESTING, AND RETAIL OF RECREATIONAL MARIJUANA WITHIN CERTAIN COMMERCIAL, MANUFACTURING, AND WATERFRONT ZONING DISTRICTS

**Rev. 1
#0486**

Sponsor:

**Council
Member
Cabrerá**

WHEREAS, due to the economic and other benefits of having a legal marijuana market while regulating the substance in a manner similar to alcohol and restricting its use to persons over 21 years of age, the Delaware General Assembly passed House Bill No. 2 entitled “An Act to Amend Titles 4, 11, 16, and 30 of the Delaware Code Relating to the Creation of the Delaware Marijuana Control Act” (the “Delaware Marijuana Control Act”); and

WHEREAS, the Delaware Marijuana Control Act, among other things, provides for the lawful operation of certain marijuana-related establishments and authorizes the issuance of 125 Statewide business licenses, which will become available in late 2024 and early spring 2025, for the following four types of marijuana-related uses: cultivation (60 licenses); manufacturing (30 licenses); retail (30 licenses); and testing (5 licenses); and

WHEREAS, although Chapter 48 of the City of Wilmington’s (the “City”) Code (the “Zoning Code”) does not currently define or explicitly permit marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores, such uses are currently permitted in various zoning districts under the Zoning Code by virtue of the Delaware Marijuana Control Act and the Zoning Code’s generic permitted uses, such as retail store or shop and light manufacturing; and

WHEREAS, some of the City’s zoning districts in which the four types of marijuana-related uses are currently permitted are not necessarily appropriate for such uses; and

WHEREAS, the Delaware Marijuana Control Act allows municipalities to (i) prohibit or limit the operation of the four types of marijuana-related uses through the enactment of an ordinance or through an initiated or referred measure and (ii) enact ordinances or regulations,

which do not conflict with State laws and regulations, governing the time, place, and manner that marijuana establishments may operate in the municipalities; and

WHEREAS, the City would like to amend the Zoning Code to define and explicitly permit marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores with certain restrictions including: (i) limiting the zoning districts in which such uses would be permitted (namely, all four uses would be permitted in the M-1 (Light Manufacturing) and M-2 (General Industrial) manufacturing and industrial zoning districts, the W-1 (Waterfront Manufacturing), W-2 (Waterfront Manufacturing/Commercial), and W-3 (Waterfront Low Intensity Manufacturing/Commercial Recreation) waterfront zoning districts, and the C-5 (Heavy Commercial) commercial zoning district as a matter of right; retail uses would also be permitted in the C-3 (Central Retail) and C-4 (Central Office) commercial zoning districts as a matter of right; retail uses would be permitted as special exception uses in the C-2 (Secondary Business Centers) and C-2A (Secondary Office and Business Centers) commercial zoning districts; and retail and testing facilities would be permitted as special exception uses in the W-4 (Waterfront Residential/Commercial) waterfront zoning district); (ii) requiring a 100-foot buffer zone between any of the four marijuana-related uses and (a) residential zoning districts and (b) public and private schools serving any grade between kindergarten and twelfth grade; (iii) requiring 2600 feet between any new licensed establishment and an existing licensed establishment of the same type accessible by public road or street; and (iv) adding parking requirements for marijuana product testing facilities (additional parking requirements are not necessary for the marijuana cultivation facilities or marijuana product manufacturing facilities, which are treated as manufacturing for the purposes of parking, or retail marijuana stores,

which are treated as retail operations for purposes of parking, because parking requirements are already provided for manufacturing and retail operations in the City Code); and

WHEREAS, this Ordinance only addresses the cultivation, manufacture, testing, and retail of recreational marijuana and does not affect medical marijuana related to “compassion centers” as defined in Title 4, Section 1302 of the Delaware Code; and

WHEREAS, at its October 22, 2024 meeting, the City Planning Commission reviewed the amendments contained in this Ordinance and, by its Resolution 8-24, as amended, recommended the proposed amendments to the Zoning Code contained in this Ordinance; and

WHEREAS, in light of the foregoing, City Council deems it necessary and appropriate to amend Chapter 48 of the City Code as described above and set forth below.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON

HEREBY ORDAINS:

SECTION 1. Chapter 48 of the City Code is hereby amended by amending Section 48-2 thereof by adding the underlined language to read as follows:

Sec. 48-2. - Definitions.

(c) The following words and phrases shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this subsection, as follows:

Consumer means an individual 21 years of age or older who purchases marijuana, marijuana products, or marijuana accessories for personal use by the individual or other individuals 21 years of age or older, but not for resale to others.

License means any license or permit to cultivate, possess, manufacture, sell, transport, or test marijuana or marijuana products and accessories authorized or issued by the Marijuana Commissioner for the State of Delaware.

Marijuana means 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 any of the following:

- (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 as defined in Section 2801 of Title 3 of the Delaware Code.

Marijuana accessories means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing; or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

Marijuana cultivation facility or cultivation facility means an entity licensed 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 means an entity licensed as a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

Marijuana product manufacturing facility means an entity licensed to 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 products means products that are comprised of marijuana, including concentrated marijuana, and other ingredients and are intended for use or consumption, such as edible products, ointments, and tinctures.

Marijuana testing facility means an entity licensed to test marijuana for potency and contaminants.

Public place means any indoor or outdoor area or portion thereof generally accessible to the public.

Retail marijuana means marijuana that is cultivated, manufactured, distributed, or sold by a licensed retail marijuana establishment.

Retail marijuana store means an entity licensed 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.

SECTION 2. Chapter 48 of the City Code is hereby amended by amending Article I (In General) thereof by adding a new Section 48-7 and renumbering the Reserved Sections by deleting the stricken language and adding the underlined language to read as follows:

ARTICLE I. – IN GENERAL

Sec. 48-7. Controlling zoning districts for marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores.

Marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores shall only be permitted in the zoning districts explicitly permitting such uses in this chapter. Such uses shall not be permitted in any other zoning districts pursuant to generic uses permitted in such zoning districts, such as retail store or shop or light manufacturing. The generic uses, however, shall govern the hours of operation and parking requirements for marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores, except to the extent that the Delaware Code or chapter 5 of this Code contains more restrictive requirements for hours of operation.

Secs. 48-78 - 48-30. – Reserved.

SECTION 3. Chapter 48 of the City Code is hereby amended by amending Article V (Commercial Districts), Division 2 (Use Regulations) thereof by adding the underlined language to read as follows:

ARTICLE V. – COMMERCIAL DISTRICTS

DIVISION 2. – USE REGULATIONS

Sec. 48-193. - C-2 districts.

(d) *Uses permitted under zoning board of adjustment approval.* The following uses are permitted if approved by the zoning board of adjustment as provided in article II, division 3 of this chapter, subject to the conditions specified below in each case:

(6) Retail marijuana store, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

Sec. 48-194. - C-2-A districts.

(d) *Uses permitted under zoning board of adjustment approval.* The following uses are permitted if approved by the zoning board of adjustment as provided in article II, division 3 of this chapter, subject to the conditions specified below in each case:

(6) Retail marijuana store, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

Sec. 48-195. - C-3 districts.

(c) *Uses permitted as matter of right.* The following uses are permitted as a matter of right:

(7) Retail marijuana store, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

Sec. 48-197. - C-5 districts.

(c) *Uses permitted as a matter of right.* The following uses are permitted as a matter of right:

(11) Marijuana cultivation facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(12) Marijuana product manufacturing facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(13) Marijuana testing facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(14) Retail marijuana store, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

SECTION 4. Chapter 48 of the City Code is hereby amended by amending Article VI (Manufacturing and Industrial Districts), Division 2 (Use Regulations) thereof by adding the underlined language to read as follows:

ARTICLE VI. – MANUFACTURING AND INDUSTRIAL DISTRICTS

DIVISION 2. – USE REGULATIONS

Sec. 48-246. - M-1 districts.

(b) *Permitted uses.* In any M-1 district no building or premises shall be used and no building shall be erected or altered, except as provided elsewhere in this chapter, which is arranged, intended or designed to be used except for one or more of the uses listed below, and subject to off-street parking and loading requirements of article X of this chapter:

(20) Marijuana cultivation facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(21) Marijuana product manufacturing facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(22) Marijuana testing facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(23) Retail marijuana store, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

Sec. 48-247. - M-2 districts.

(b) *Permitted uses.* Subject to the prohibitions and controls specified in the following subsections of this section, all uses not otherwise prohibited by law are permitted in any M-2 district, subject to the off-street parking and loading requirements of article X of this chapter. Specifically permitted in M-2 districts are consumer recycling collection centers, without restriction of hours of operation. Specifically permitted are neighborhood police stations. Use shall be subject to the limitation on hours of operation contained in chapter 5 of this Code. Specifically permitted are marijuana cultivation facilities, marijuana product manufacturing facilities,

marijuana testing facilities, and retail marijuana stores, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482. Use shall be subject to the limitations on hours of operation contained in the Delaware Code or chapter 5 or 48 of this Code, with the more restrictive hours of operation governing. Antenna use shall be subject to the conditions specified for such use under article XI, division 4 and any regulations promulgated in furtherance thereof.

SECTION 5. Chapter 48 of the City Code is hereby amended by amending Article VIII (Waterfront Districts), Division 2 (Use Regulations) thereof by adding the underlined language to read as follows:

ARTICLE VIII. – WATERFRONT DISTRICTS

DIVISION 2. – USE REGULATIONS

Sec. 48-336. - W-1 district.

(b) *Uses permitted as a matter of right.* The following uses are permitted as a matter of right:

(16) Marijuana cultivation facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(17) Marijuana product manufacturing facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(18) Marijuana testing facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(19) Retail marijuana store, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

Sec. 48-337. - W-2 district.

(b) *Uses permitted as a matter of right.* The following uses are permitted as a matter of right:

(21) Marijuana cultivation facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(22) Marijuana product manufacturing facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(23) Marijuana testing facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(24) Retail marijuana store, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

Sec. 48-338. - W-3 district.

(b) *Uses permitted as a matter of right.* The following uses are permitted as a matter of right:

(16) Marijuana cultivation facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(17) Marijuana product manufacturing facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(18) Marijuana testing facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(19) Retail marijuana store, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

Sec. 48-339. - W-4 district.

(c) *Uses permitted under zoning board of adjustment approval.* The following uses are permitted if approved by the zoning board of adjustment as provided in article II, division 3 of this chapter, subject to the condition that the proposed development will be consistent with the waterfront development review standards and will not preclude the development of those uses permitted as a matter of right:

(13) Marijuana testing facility, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

(14) Retail marijuana store, subject to the buffer zone requirement set forth in section 48-481 and the distance requirement set forth in section 48-482.

SECTION 6. Chapter 48 of the City Code is hereby amended by amending Section 48-445 thereof by adding the underlined language to read as follows:

Sec. 48-445. - Parking spaces accessory to storage, manufacturing and industrial uses and indoor commercial horticultural operations.

After March 8, 1962, no building shall be erected for the storage, manufacturing and industrial uses listed in the following table unless accessory parking space is provided and maintained on the premises in accordance with the requirements specified in such table:

Use and District	Minimum Amount of Parking Space Required
Warehouse or storage establishment or indoor commercial horticultural operation:	
C-1, C-2, C-3, C-4, C-5, C-6, M-1, M-2, W-1, W-2, W-3	One for each 3,000 square feet of gross floor area

C-2-A	The greater of one for each employee or one for each 2,000 square feet of gross floor area
Manufacturing or industrial establishment:	
C-2-A	The greater of one for each employee or one for each 2,000 square feet of gross floor area
M-1, M-2, W-1, W-2, W-3	One for each three employees, computed on the basis of the estimated maximum number of employees at any one time, in an establishment with four or more employees
Laboratory, Research, and Testing Facilities:	
<u>C-5, M-1, M-2, W-1, W-2, W-3</u> <u>W-4 (for W-4, only if approved by the zoning board of adjustment)</u>	<u>The greater of one space per employee or one space per 2,000 square feet of gross floor area</u>

SECTION 7. Chapter 48 of the City Code is hereby amended by amending Article XI (Supplementary Regulations), Division 1 (Generally) thereof by adding new Sections 48-481 and 48-482 and renumbering the Reserved sections by deleting the stricken language and adding the underlined language to read as follows:

ARTICLE XI. – SUPPLEMENTARY REGULATIONS

DIVISION 1. – GENERALLY

Sec. 48-481. – Buffer zone for marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores.

A buffer zone of 100 feet shall exist between any marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, or retail marijuana store and any:

- (1) residential zoning district; or
- (2) public or private school serving any grade between kindergarten and twelfth grade.

Sec. 48-482. – Distance requirement between marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores.

- (a) The Marijuana Commissioner for the State of Delaware shall refuse to grant a license for the sale of marijuana, marijuana products, or marijuana accessories when there is an existing licensed establishment of the same type within 2600 feet by accessible public road or street.
- (b) Subsection (a) does not apply to any of the following:
 - (1) Any existing license or to the sale, transfer of ownership, or renewal of an existing license.
 - (2) Any licensee who desires to move the location of the licensee’s license to a location within 500 feet thereof by accessible public road or street or any licensee located in a shopping center or shopping mall who desires to move the location of the licensee’s license any distance within the same shopping center or shopping mall, whether such center or mall consists of 1 or more than 1 separate buildings.

Secs. 48-4813 - 48-490. – Reserved.

SECTION 8. This Ordinance shall be effective upon its passage by City Council and approval by the Mayor.

First Reading October 3, 2024
Second Reading October 3, 2024
Third Reading

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2024.

Mayor

SYNOPSIS: In light of and consistent with the passage of the Delaware Marijuana Control Act by the Delaware General Assembly, this Ordinance amends various sections of Chapter 48 of the City Code to explicitly permit and limit the cultivation, manufacture, testing, and retail of recreational marijuana within certain commercial, manufacturing, and waterfront zoning districts in the City of Wilmington as follows: (i) marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores will be permitted in the M-1 (Light Manufacturing) and M-2 (General Industrial) manufacturing and industrial zoning districts, the W-1 (Waterfront Manufacturing), W-2 (Waterfront Manufacturing/Commercial), and W-3 (Waterfront Low Intensity Manufacturing/Commercial Recreation) waterfront zoning districts, and the C-5 (Heavy Commercial) commercial zoning district as a matter of right; (ii) retail marijuana stores will also be permitted in the C-3 (Central Retail) and C-4 (Central Office) commercial zoning districts as a matter of right; (iii) retail marijuana stores will be permitted as special exception uses in the C-2 (Secondary Business Centers) and C-2A (Secondary Office and Business Centers) commercial zoning districts; and (iv) marijuana testing facilities and retail marijuana stores will be permitted as special exception uses in the W-4 (Waterfront Residential/Commercial) waterfront district. In addition, this Ordinance requires a buffer zone of 100 feet between any of the four permitted marijuana-related uses and (i) residential zoning districts and (ii) public and private schools serving any grade between kindergarten and twelfth grade. This Ordinance also requires 2600 feet between any new licensed establishment and an existing licensed establishment of the same type accessible by public road or street. Finally, this Ordinance establishes parking requirements for laboratory, research, and testing facilities, which will apply to marijuana testing facilities.

FISCAL IMPACT STATEMENT: There is no anticipated negative fiscal impact associated with this Ordinance.

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