

**WEEDING
THROUGH
AMENDMENT 3:
STATE MARIJUANA LAW
CHANGES**

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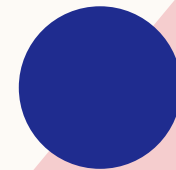
of

CUNNINGHAM, VOGEL & ROST, P.C.

St. Louis Area City/County
Management Association
February 8, 2023

MAIN TOPICS

- Introduction
- Zoning, Siting, and Licensing
- Taxation
- Employment Issues
- Offenses and Policing



WHAT IS AMENDMENT 3?

- On November 8, 2022, Missouri voters approved an amendment to the Missouri Constitution to amend Article XIV (“Amendment 3”)
- Article XIV covers adult Marijuana use, cultivation, and possession, and business location, and Amendment 3 changes certain medical marijuana provisions
- Amendment 3 went into effect on December 8, 2022, with certain changes rolling into effect over the course of 2023-2025

ADULT-USE TIMELINE

2022



Nov. 8, 2022

Missouri approves Amendment 3. DHSS released draft program rules two days later.

Amendment Passes

Dec. 8, 2022

DHSS begins accepting requests from facilities to convert operations for adult-use. Patient cards now valid for three years.

Law Effective

2023



Jan. 7, 2023

Personal cultivation application forms and instructions available to the public.

Cultivation Apps

Feb. 6, 2023

Program rules finalized. Marijuana may be available in dispensaries once licensed. Personal cultivation applications accepted.

Facilities Licensed

2023 (cont'd)



June 6, 2023

Microbusiness application forms and instructions available.

Microbusiness Apps

Sept. 4 - Oct. 4, 2023

Microbusiness applications accepted (1st round).

Microbusiness Apps

Dec. 3, 2023

Microbusiness applications reviewed for eligibility.

Application Reviews

2024



June 2024

Microbusiness applications accepted for 2nd round.

Microbusiness Apps

2024 (cont'd) 2025



Aug. 2024

Microbusiness applications reviewed for eligibility.

Application Reviews

March 2025

Microbusiness applications accepted for 3rd round.

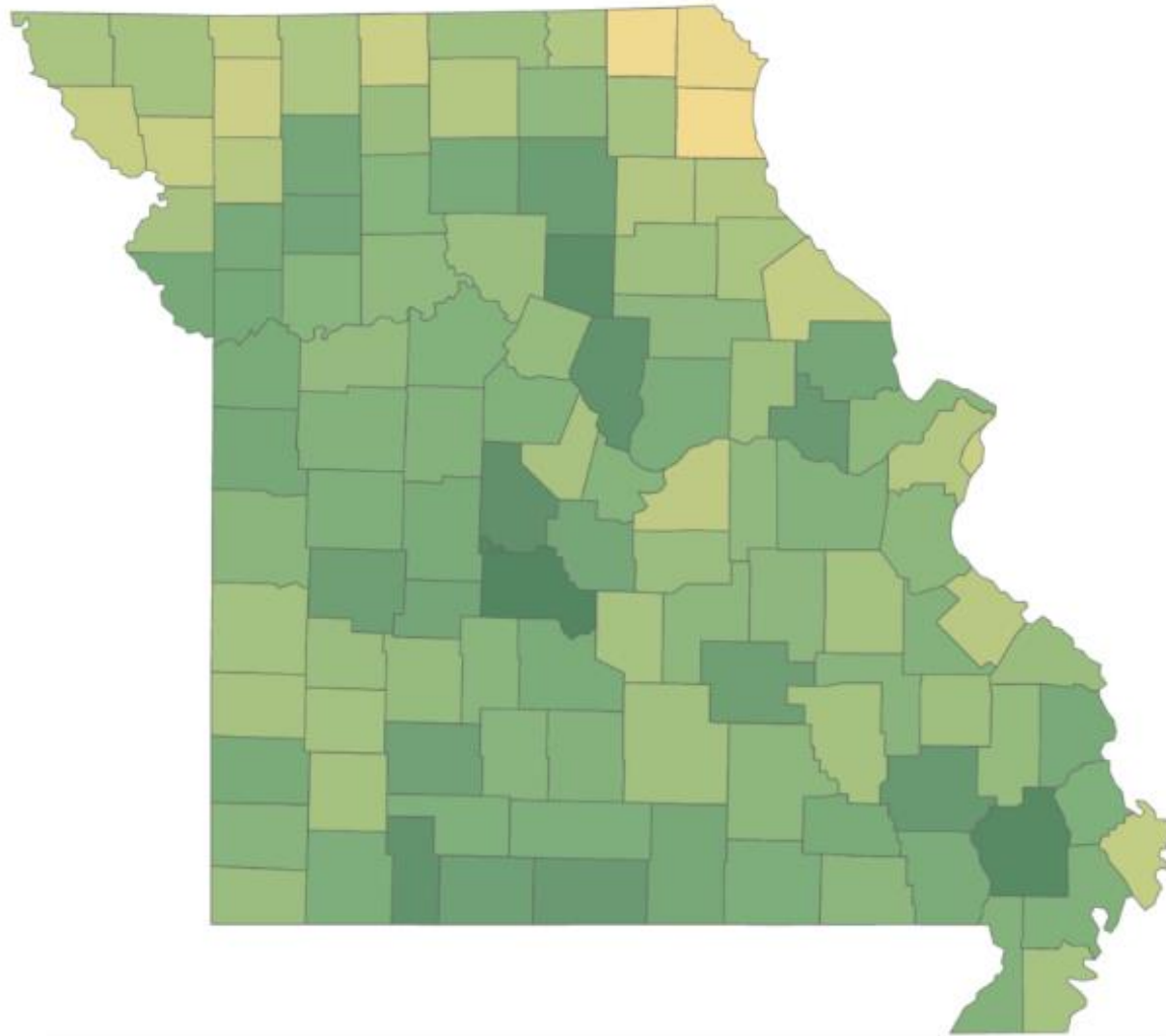
Microbusiness Apps

May 2025

Microbusiness applications reviewed for eligibility.

Application Reviews

Active Missouri Medical Marijuana Patient Distribution



Medical Marijuana
Population per 100k



Active Patient
Population

34 26216



County Population

1,973 1,004,125



County

(All) ▾

Missouri has medical marijuana cardholders across the state, not just in urban areas. (Source: Missouri Department of Health and Senior Services)

MISSOURI Presentation title



DIFFERENCE

127,417





**LICENSING,
ZONING, AND
SITING**

LICENSING

- Amendment 3 provides that any entity providing medical marijuana (cultivation, dispensary, or marijuana-infused products manufacturing) has ***a right to convert their license to a comprehensive license***
 - In reference to ***state*** licenses
- “***Comprehensive***” refers to a licensee’s ability to provide both medical & adult-use
- The Department of Health and Senior Services (DHSS) has 60 days to review and grant these conversion applications, meaning licenses can convert as early as ***February 6, 2023***
- Municipalities still cannot require ***new, local*** marijuana businesses licenses, but ***may enforce existing, generally applicable*** business licenses

ZONING

- While licensee's may have a right to convert their ***license*** to allow for comprehensive marijuana facilities, there is no corresponding right to convert the licensee's ***zoning*** over that facility
- Municipalities still maintain the ability to enact regulations governing the "time, place, and manner of operation of such facilities" within a municipality's borders, ***so long as those regulations do not conflict with Amendment 3***
- Regulations may conflict with Amendment 3 if they are "**unduly burdensome**"

ZONING STANDARD

- A municipality's regulations could be determined to be "unduly burdensome" if such regulations subject the business to:
 - Such a high investment or ***expense of money, time, or any other resource or asset that a reasonably prudent business person would not operate the facility***
 - (INDUSTRY-FRIENDLY STANDARD!)

THE OLD TERMS

- Medical Marijuana Cultivation Facility
- Medical Marijuana-infused products Manufacturing Facility
- Medical Marijuana Dispensary Facility
- Medical Marijuana Research Facility
- Medical Marijuana Testing Facility
- Transportation Facility

THE NEW TERMS

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- Marijuana Research Facility
- Marijuana Testing Facility
- Transportation Facility
- Comprehensive Marijuana Cultivation Facility
- Comprehensive Marijuana Dispensary Facility
- Comprehensive Marijuana-infused Products Manufacturing Facility
- Microbusiness Dispensary Facility
- Microbusiness Wholesale Facility

POSSIBLE LOCATIONS

- Can treat new cultivation and manufacturing uses same as medical counterpart
 - Likely industrial area
- Comprehensive and microbusiness dispensary?
 - Recommend CUP/SUP

SPACING REQUIREMENTS

- Amendment 3 provides a spacing requirement that marijuana facilities (both medical or adult-use/comprehensive) must be 1,000 feet away from any existing elementary or secondary school, child daycare center, or church (here, a “spaced site”)
 - This spacing amount can be **decreased** by a municipality but **cannot be increased**
- Spacing is measured as:
 - In the case of a freestanding Marijuana Facility, the distance ... shall be measured from the external wall of the Facility structure closest in proximity to the [spaced site] to the closest point of the Property Line of the [spaced site]. If the [spaced site] is part of a larger structure, the distance shall be measured to the entrance or exit of the [spaced site] closest in proximity to the Facility
 - In the case of a Marijuana Facility that is part of a larger structure, the distance between the Facility and the [spaced site] shall be measured from the Property Line of [spaced site] to the Facility’s entrance or exit closest in proximity to the [spaced site]. If the [spaced site] is part of a larger structure, the distance shall be measured to the entrance or exit of the [spaced site] closest in proximity to the Facility

ADDITIONAL CONSIDERATIONS

- Odor
- Security
- Visibility
- Access/traffic & Parking
- Drive Thru
- Outdoor operations
- Hours of operation

SIGNAGE

- Amendment 3 (and proposed DHSS regulations) provide certain requirements/limitations on signage for marijuana businesses:
 - Pursuant to 19 CSR 30-95.040(4)(M), the use of images or visual representations of marijuana plants, products, or paraphernalia, including smoke, is prohibited on outdoor signage located **on facility premises** as well as on indoor signage visible from a public right-of-way
 - Additionally, Section 338.260 RSMo. provides that no person shall carry on, conduct or transact a business under a name which contains as part of the name the words “pharmacist”, “pharmacy”, “apothecary”, “apothecary shop”, “chemist shop”, “drug store”, “druggist”, “drugs”, “consultant pharmacist”, or any word of similar or like import, unless the place of business is supervised by a licensed pharmacist

PERSONAL CULTIVATION

- Qualifying Patient or Caregiver still has a right to cultivate marijuana plants at their residence with state issued card
- Now, that right is expanded to any person 21+ with state issued card
- Limits on amount
- Must be in a locked facility, odor control system, etc.

BANS OVER CERTAIN MARIJUANA BUSINESSES

- Municipalities **cannot** outright ban ***medical*** marijuana cultivation facilities, infused-products manufacturing facilities, or dispensary facilities. Article XIV, Section 1, Subsection 7(10)(a)
- Municipalities also **cannot** outright ban marijuana testing facilities. Article XIV, Section 1, Subsection 7(10)(a)
- However, municipalities **can** ban microbusiness dispensary facilities (for adult-use) or comprehensive marijuana dispensary facilities (medical and adult-use), ***but only after an election***

ELECTIONS TO BAN ADULT-USE BUSINESSES

- Per Article XIV, Section 2, Subsection 5(1)(a), municipalities may ban microbusiness dispensary facilities and comprehensive dispensary facilities after an election
- This vote cannot be held until **November 5, 2024(!)** and can only be held on subsequent November elections in Presidential Election Years (2028, 2032, etc.)
- This prohibition vote must receive **60% approval to become effective** Art. XIV, Section 2, Subsection 5(1)(b)
- Prohibition can be ***repealed via an election by a simply majority*** (50%+1), **or** the governing body of a municipality may repeal the ban enacted by the voters ***by its own ordinance!*** Art. XIV, Sec. 2, Sub. 5(2)(b)




TAXATION

HOW WILL RECREATIONAL MARIJUANA BE TAXED?

- Amendment 3 provides for a 6% sales tax levied by the State for the Veterans, Health, and Community Reinvestment Fund
- Amendment 3 also provides municipalities with the option to enact an additional, new sales tax of up to 3% on all retail sales of adult-use marijuana sold within the municipality upon passage of a vote of the people

LOCAL TAXATION OF ADULT-USE MARIJUANA

- This 3% additional sales tax is just that, *an additional sales tax* that stacks upon all existing sales taxes a municipality may have in effect
- This additional sales tax is not bound to the same election restrictions that prohibition of adult-use marijuana businesses are—therefore this tax for can occur at any municipal election



EMPLOYMENT ISSUES

EMPLOYMENT - PRESERVED AUTHORITY

- Amendment 3 ***does not affect the prohibition on:***
 - Operating a vehicle or other city equipment under the influence
 - Smoking in city vehicles
 - An employee coming to work under the influence or using during work hours, or in public places
 - Employees that are required to have a CDL for their position and random drug testing attendant with such position

EMPLOYMENT – NON-DISCRIMINATION

- Employer may not discriminate based on a person’s status as a qualifying patient or primary caregiver, “including the person’s legal use of a lawful marijuana product” or positive drug test if the qualifying patient was not under the influence at the city or during working hours. Art XIV, Section 1, Subsection 7(15)
- The above shall not apply to an employee in a position in which use “affects in any manner a person’s ability to perform job-related employment responsibilities or the safety of others, or conflicts with a bona fide occupational qualification that is reasonably related to the person’s employment.” Art XIV, Section 1, Subsection 7(15)



**OFFENSES AND
POLICING**

POSSESSION PARAMETERS

- Person 21+ may possess up to 3 ounces of unprocessed marijuana or its equivalent. Art XIV, Section 2, Subsection 10(1)(a)
- A primary caregiver may now have 6 nonflowering marijuana plants over 14 inches tall, 6 clones (plants under 14 inches tall) per patient in addition to the existing 6 flowering marijuana plants
- Primary caregivers cannot have more than 24 flowering plants for more than 1 qualifying patient. Art XIV, Section 1, Subsection 5(7)
- A primary caregiver can now serve 6 qualifying patients (previously 3). Art XIV, Section 1, Subsection 7(5)
- Any person 21+ may register and obtain a card from the DHSS to cultivate up to 6 flowering plants, 6 nonflowering plants (over 14 inches tall), and 6 clones (plants under 14 inches tall) for non-commercial use, subject to specific limitations. Art XIV, Section 2, Subsection 4(24)
- Amendment 3 provides that a single qualifying patient may purchase up to 6 ounces of unprocessed marijuana or its equivalent within a 30-day period. Art XIV, Section 1, Subsection 3(13)

PENALTY PROVISIONS

- Fine for smoking of marijuana in unauthorized public places: \$100. Section 2, Subsection 10(4)
- Other marijuana offenses, fines are capped at \$250 for the first, \$500 for the second, and \$1,000 for third and subsequent violations. Section 2, Subsection 10(6)
 - These marijuana offenses include the forfeiture of marijuana within possession.
- As penalty is specific in Amendment 3, may need to amend your code and/or municipal court schedule of fines to reflect the new capped penalties for such offense

CHANGES IN POLICE PROCEDURES

- In requesting a search or arrest warrant relating to the production, possession, transportation, or storage of marijuana, or for cultivation of marijuana plants, ***police shall verify with DHSS whether the target of the warrant is a qualifying patient or primary caregiver for medical marijuana.*** Art. XIV, Section 1, Subsection 5(12); Section 2, Subsection 7(6)
- Evidence of marijuana alone, ***without specific evidence indicating that the marijuana is outside what is lawful for medical or adult use, cannot be the basis for search*** of a patient or non-patient, including their home, vehicle, or other property. Art. XIV, Section 1, Subsection 5(12); Section 2, Subsection 7(6)
- In executing search warrants upon a premises for alleged marijuana-related offenses, or for the cultivation of marijuana plants, the officer executing the search warrant ***must first knock or announce their presence or purpose prior to entering the premises.*** Art. XIV, Section 2, Subsection 7(6)

POLICE PROCEDURES - SEARCHES

No conduct permitted by [Art. XIV, Sec. 2] shall constitute the basis for detention, search, or arrest; and except when law enforcement is investigating whether a person is operating a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana, the odor of marijuana or burnt marijuana, the possession or suspicion of possession of marijuana without evidence of a quantity in excess of the lawful amount, or the possession of multiple containers of marijuana without evidence of quantity in excess of the lawful amount *shall not individually or in combination with each other constitute reasonably articulable suspicion of a crime*. Marijuana and marijuana-infused products as permitted by this section are not contraband nor subject to seizure

CHANGES TO POLICE PROCEDURES – SEARCHES CONT.

- After executing a search warrant/conducting a warrantless search for alleged marijuana offense, ***a report including the following must be made by the officer to the law enforcement agency:***
 - Reasons for the warrant, or for a warrantless search a detailed account of probable cause or exigent circumstances;
 - Whether any marijuana was discovered during the search;
 - Whether and what amount of any seized marijuana;
 - Whether any other contraband was discovered or seized during the search, and if so provide a description of the discovered or seized contraband;
 - Whether an arrest was made as a result of the search; and what crime was suspected to cause an arrest. Section 2, Subsection 7(a)
- No later than ***March 1st of each year***, a law enforcement agency must submit a report compiling all of the data described directly above to the Attorney General for the preceding calendar year. The Attorney General is to determine the format for these required submissions. Section 2, Subsection 7(b)

CHANGES TO POLICE PROCEDURES – CONT.

- Individuals may not operate a motor vehicle, aircraft, or motorboat while under the influence of marijuana. Art. XIV, Section 1, Subsection 7(c); Section 2, Subsection 3(1)(d)-(e)
- Individuals may not smoke marijuana within a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being operated. Art. XIV, Section 2, Subsection 3(1)(f)
- Lawful marijuana related activities cannot be the basis for a violation of parole, probation, or any type of supervised release. Art. XIV, Section 1, Subsection 5(12)

SMOKING IN PUBLIC PLACES

- Municipalities may determine the places where marijuana may be smoked in public areas or where it may be consumed, including in preparation of culinary dishes or beverages. Art. XIV, Section 2, Section 5(6).
 - Amendment 3 does not define “public” in this sense
 - Does it apply to bars or outdoor patios? Or other places that are privately operated but open to the public?

QUESTIONS?

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