



PETITIONS TO AMEND TEXT of *Zoning Ordinance*

Applicant Development Advisory Committee Meeting of November 6, 2024

Report to the Dover Planning Commission for November 18, 2024

Proposed Changes: Text Amendments to the following:

- *Dover Code of Ordinances*, Appendix B: Zoning (*Zoning Ordinance*)
 - Article 3 – District Regulations, Section 19 – Manufacturing Zone (M)
 - Article 3 – District Regulations, Section 20 – Industrial Park Manufacturing Zone (IPM)
 - Article 3 – District Regulations, Section 23 – Agricultural Zone (A)
 - Article 3 - District Regulations, Section 16 – Highway Commercial Zone (C-4)
 - Article 5 – Supplementary Regulations (Add Section 24)
 - Article 12 – Definitions

Summary of Amendments:

This is a series of text amendments to the *Zoning Ordinance* to address the passage of the Marijuana Control Act by the Delaware General Assembly. Under the statute, municipalities can regulate where and how the marijuana-related land uses addressed by the law are permitted within the municipal limits. Municipalities can also prohibit marijuana-related land uses. The proposed Ordinance #2024-29 addresses marijuana cultivation, product manufacturing, and testing. The proposed Ordinance #2024-30 addresses marijuana retail stores. Together, the Ordinances would allow marijuana cultivation, product manufacturing, and testing facilities in the IPM and M Zones; marijuana cultivation facilities in the A Zone; and marijuana retail stores in the C-4 Zone. They would also add supplementary regulations (Section 24) for the marijuana-related uses in Article 5 and definitions for the marijuana-related uses in Article 12.

File Number: MI-24-09 Text Amendments: Recreational Marijuana Lands Uses and Related Zoning Regulations

Ordinance Numbers: **#2024-29**
Proposed Ordinance #2024-29 – Amending Appendix B-Zoning, Article 3 – District Regulations, Section 19 – Manufacturing Zone (M), Section 20 – Industrial Park Manufacturing Zone (IPM), Section 23 – Agricultural Zone (A); Article 5 Supplementary Regulations; Section 24 – Marijuana Related Businesses, Article 12 – Definitions

#2024-30
Proposed Ordinance #2024-30 – Amending Appendix B- Zoning, Article 3 – District Regulations, Section 16 – Highway Commercial Zone (C-4); Article 5 – Supplementary Regulations, Section 24 – Marijuana Related Businesses; Article 12 - Definitions

I. BACKGROUND ON DEVELOPMENT OF TEXT AMENDMENTS

Introduction

Recreational marijuana became legal in the state of Delaware on July 5, 2023, when [the Delaware Marijuana Control Act](#) went into effect. This means that adults (ages 21+) may legally possess personal use quantities of marijuana in Delaware. Adults may also legally consume marijuana on private property.

The Delaware Marijuana Control Act allows municipalities to regulate (including prohibit) land uses relating to cultivation, manufacturing, testing, and retail sale of marijuana within their jurisdiction through local ordinance. The *Zoning Ordinance* does not currently define or otherwise address the uses regulated under the Marijuana Control Act. The proposed ordinances would provide the framework for the uses established within the Marijuana Control Act in the City of Dover.

Background

The Dover City Council Committee of the Whole – Legislative, Finance and Administration Subcommittee (CCW-LF&A) first discussed the Marijuana Control Act and how the City might address the regulated uses at a meeting on September 26, 2023. In a subsequent meeting on April 9, 2024, the CCW-LF&A discussed the matter again and directed the staff to develop an ordinance permitting marijuana cultivation, manufacturing, and testing in the M and IPM Zones and permitting marijuana retail stores in the C-4 Zone, with regulations such as distancing requirements and other measures intended to protect neighboring uses from any potential adverse effects of these new uses.

Working with a consultant, the staff developed an ordinance that was presented to the CCW-LF&A on June 11, 2024. In response to public comment, the CCW-LF&A requested that the staff provide additional research. An informational webpage on the topic of Marijuana Regulations was added to the City's website; see <https://www.cityofdover.com/marijuanaregulations>. Several of the research and background documents are attached for reference including the Recreational Marijuana White Paper and Marijuana Ordinance Q&A.

In July 2024, the City Council enacted a moratorium on all marijuana-related land uses through December 31, 2024, to ensure that no licenses would be issued for Dover locations while the matter was being deliberated. (See attached Moratorium as Council Resolution #2024-11)

In July 2024, a Survey to assess public opinion on how the City should address marijuana-related uses was made available online, at City buildings, and mailed with all utility bills. Survey respondents generally favored allowing marijuana-related uses in Dover with restrictions. The Summary of City of Dover Marijuana Survey (Report) is attached.

After discussing potential ordinances to address marijuana-related uses in Dover in seven public meetings, on October 15, 2024, CCW-LF&A recommended forwarding draft ordinances to City Council for First Reading. Four Ordinances to address business licensing and zoning of marijuana-related businesses were forwarded to begin the formal review process (identified as Ordinance #2024-24 and #2024-25 for business licensing; #2024-29 and #2024-30 for zoning regulations). First Reading of the Ordinances took place at the City Council meeting on October 28, 2024, at which time City Council set public hearings before the Planning Commission on November 18, 2024, and before the City Council on December 9, 2024.

State of Delaware Regulations and Licenses

The Delaware Office of the Marijuana Commissioner (OMC) developed state regulations to govern the new recreational marijuana industry. The regulations were finalized in July 2024 and effective September 2024. The OMC office began accepting license applications on August 19, 2024. The first public license lottery was held by the Office of the Marijuana Commissioner on October 24, 2024. The State expects the first retail marijuana stores to open in spring 2025.

Also in 2024, the Delaware General Assembly passed a bill that allows medical marijuana facilities (compassion centers) to obtain a conversion license to convert to recreational facilities regulated under the Marijuana Control Act. In Dover, there is one compassion center that is retail only. This facility applied for a conversion license through the Office of the Marijuana Commissioner.

Proposed Ordinances

Two Ordinances proposed are text amendments to the *Zoning Ordinance*. These are described below with copies of the Proposed Ordinances attached. Also provided are excerpts from a map series (Map 1, 2, 3, and 4) which depict zoning district locations and the regulations (buffers) as proposed.

Ordinance #2024-29 – (Previously #2024-25A) This proposed Ordinance #2024-29 would permit marijuana cultivation, manufacturing and testing facilities in the Manufacturing (M) and Industrial Park Manufacturing (IPM) zones and would allow marijuana cultivation in the Agricultural (A) zone. The proposed Ordinance #2024-29 would classify State-licensed compassion centers as a retail use (consistent with current practice). It would also establish the standards by which such businesses would be required to operate, including:

- Confirming that compassion centers (retail only) are permitted in all commercial zones where retail uses are permitted;
- Requiring the building footprint for marijuana cultivation facilities or marijuana product manufacturing facilities be at least 750 feet away from any residential zone, the lot line of any private or public K-12 school, hospital, college or university, child day care center, or State of Delaware licensed substance abuse disorder treatment facilities;
- Requiring that the building footprint of marijuana product testing facilities be at least 750 feet away from any residential zone, the lot line of any private or public K-12 school, hospital, child day care center, or State of Delaware licensed substance abuse disorder treatment facilities;
- Requiring that marijuana cultivation facilities and marijuana product manufacturing facilities install odor control technology and that all openings, windows and entryways for such facilities be covered to prevent view into the interior from any public or semipublic area;
- Requiring that applicants for marijuana cultivation and marijuana product manufacturing uses comply with the provisions of the water, wastewater and electric handbooks, and that any the cost of utility upgrades required to support the utility demand for these facilities would be the responsibility of the applicant.
- The draft ordinance would also establish definitions for the marijuana land uses that are consistent with the State definitions.

Ordinance #2024-30 – (Previously #2024-25B) This proposed Ordinance #2024-30 would permit marijuana retail stores in the Highway Commercial (C-4) zone, establish a definition for

“retail marijuana store” consistent with the State regulations, and establish the standards by which such businesses would be required to operate, including:

- Requiring that the building footprint for retail marijuana stores be at least 500 feet away from the lot line of any private or public K-12 school, child daycare center, State of Delaware licensed substance abuse disorder treatment facility, hospital, college, or university and at least 250 feet from any residential zone;
- Requiring that the building footprint for a retail marijuana store be at least one (1) mile from the lot line of any other marijuana retail store within the City of Dover;
- Requiring that that all openings, windows and entryways for retail marijuana stores be covered to prevent view into the interior from any public or semipublic area;
- Allowing for a compassion center licensed by the State before January 1, 2024, to be permitted to convert to a retail marijuana store exempt from the distancing requirement.
- The draft ordinance would also establish definitions for the marijuana land uses that are consistent with the State definitions.

Other Ordinances

In addition to these two proposed ordinances related to zoning/land use for recreational marijuana facilities there are two companion ordinances related to business licensing. Proposed Ordinances #2024-24 and #2024-25 are proposed amendments to the *Dover Code of Ordinances* to establish the business license fees for marijuana cultivation, manufacturing, and test facilities, marijuana retail stores, and compassion centers. These are not subject to review by the Planning Commission as they do not amend the *Zoning Ordinance*.

II. TEXT AMENDMENT REVIEW PROCESS

Because these are Text Amendments proposed to the *Zoning Ordinance*, a Public Hearing and Recommendation by the Planning Commission is required. This review process began when the proposed Ordinance was submitted to the City Council for First Reading on October 28, 2024. The City Council has referred Ordinances #2024-29 and #2024-30 to the Planning Commission for a Public Hearing and consideration on November 18, 2024 (Planning Commission SESSION 2). Then it is scheduled for Final Reading, Public Hearing and Final Action by Council on December 9, 2024. At the meeting the City Council may act to adopt the whole Ordinances, to reject it, or to adopt the Ordinances with amendments. Legal Advertisements were published in the Daily State News on Sunday, November 3, 2024 giving notice and participation information for the Public Hearings as scheduled.

III. RECOMMENDATION OF PLANNING STAFF:

Review and Recommendations:

As part of the process outlined in *Zoning Ordinance*, Article 10 Section 5, the City Planner must evaluate the following factors when preparing a report on the text amendment request:

Article 10 § 5.22 *City planner report*. For each proposed zoning text amendment, the city planner shall issue a report to the planning commission and city council, including comments from other reviewing agencies, that evaluates the following factors:

(A) Whether such change is consistent with the aims and principles embodied in the ordinance as to the particular zones concerned; and;

(B) Whether proposed amendment is consistent with the aims of the comprehensive plan of the city.

The City of Dover developed the subject Ordinances in response to the State's legalization of recreational marijuana through the Delaware Marijuana Control Act. In developing the Ordinances, the principles and aims of the *Zoning Ordinance* and the *2019 Comprehensive Plan* were considered.

Marijuana cultivation, product manufacturing, and testing are consistent with the types of uses permitted within the M (Manufacturing Zone) and IPM (Industrial Park Manufacturing Zone) Zones, as these zones permit manufacturing and industrial processing of goods and research and testing labs. Marijuana Cultivation is consistent with other uses permitted within the A (Agricultural Zone), including crop harvesting. Marijuana retail stores are consistent with other permitted uses in the C-4 Zone including retail, and the C-4 Zone is intended for high-intensity, auto-dependent uses. Additionally, in response to concerns regarding this new category of uses, the Ordinances provide distancing requirements from incompatible uses and other protections that municipalities are allowed to control (time and place).

The *2019 Comprehensive Plan*, Chapter 12: Land Development Plan discusses goals for various land use types (Land Use Categories). Relative to the proposed Ordinances, the following sections apply. In relation to Commercial – High Intensity Areas, specifically US Route 13/DuPont Highway and Bay Road Corridors, the Plan's recommendation states (page 12-13):

The US Route 13/DuPont Highway and Bay Road corridors are dominated by highway focused commercial development, as free-standing buildings, strip commercial centers, and formal shopping centers and mall spaces. For the most part, the Land Development Plan proposes to continue US Route 13/DuPont Highway and Bay Road as the major commercial corridors in Central Delaware.

In relation to Employment Centers, the Plan includes the following policy (page 12-17):

Provide sufficient land area for industrial purposes to enable the expansion of existing industries, the establishment of new facilities, and revitalization of underutilized older industrial sites.

The Planning Office finds that the proposed Ordinances are consistent with the aims and principles of the *Zoning Ordinance* and the zones specifically addressed, as well as with the aims of the *2019 Comprehensive Plan*.

Additionally, the following advisory items are noted.

- 1) The Planning Office provided an opportunity to Development Advisory Committee (DAC) members to comment on the proposed Text Amendments at their meetings on October 30, 2024 and November 6, 2024. Several Departments/Agencies which participate in the DAC process provide comments of "no objection" with regard to the proposed Text Amendments. It is noted that some of these Departments participated in the research into the development of the proposed ordinances.
- 2) The Proposed Ordinances are also subject to Legal Review by the City Solicitor, which may identify additional clarifications or corrections.
- 3) The approval of these Text Amendments does not authorize the establishment of the

regulated uses at any specific location. Prior to the establishment of a use, a State license through the Office of the Marijuana Commissioner and the appropriate applications for site development activity plan review, Building Permits, and other construction activity Permits, Business and Occupancy Licensing, etc. of the City of Dover are required.

V. PLANNING COMMISSION REVIEW FOR RECOMMENDATION

This is a request for a zoning text amendment which revises the text in the *Zoning Ordinance*. The Planning Commission as part of their public hearing and review process will provide a recommendation on the zoning text amendment request to City Council. As part of the process outlined in *Zoning Ordinance*, Article 10 Section 5, the Planning Commission must evaluate the following factors when considering the request:

Article 10 § 5.23 *Report of the planning commission*. Regarding each proposed amendment to the ordinance text, the planning commission shall provide a report to the city council stating a recommended action with regards to the proposed amendment, along with the commission's evaluation of the following factors:

(A) Whether such change is consistent with the aims and principles embodied in the ordinance as to the particular zones concerned; and

(B) Whether such proposed amendment is consistent with the aims of the comprehensive plan of the city.

A Recommendation Report from the Planning Commission will be forwarded to the City Council for their consideration of the Text Amendment Application.

Attachments:

- Development Advisory Committee Comments
- Proposed Ordinance #2024-29 (Zoning Regulations for Cultivation, Manufacturing, and Testing Marijuana Facilities and Compassion Centers)
- Proposed Ordinance #2024-30 (Zoning Regulations for Retail Marijuana Stores and Compassion Centers)
- Council Resolution #2024-11 for Moratorium on Recreational Marijuana Related Uses
- Recreational Marijuana White Paper (updated September 9, 2024)
- Marijuana Ordinance Q&A
- Summary of City of Dover Marijuana Survey (Report)
- Maps 1-4 (Excerpt of Map Series):
 - Map 1 - Based on Ordinance #2024-29 (zoning for cultivation, manufacturing, and testing) as proposed
 - Map 2 - Based on Ordinance #2024-30 (zoning for retail) as proposed
 - Map 3 – Zoning: A, IPM, M parcels
 - Map 4 – Zoning: C-4 parcels



CITY OF DOVER

DEVELOPMENT ADVISORY COMMITTEE

APPLICATION REVIEW COMMENTARY

STAFF D.A.C. MEETING DATE: OCTOBER 30, 2024



APPLICATION: Text Amendments: Recreational Marijuana Land Uses and Related Zoning Regulations

FILE #: MI-24-09

REVIEWING AGENCY: City of Dover Department of Public Works and Water & Wastewater

CONTACT PERSON: Jason A. Lyon, P.E., Director of Water & Wastewater / Engineering Services

CONTACT PHONE #: 302-736-7025

CONTACT EMAIL: jlyon@dover.de.us

THE SUBJECT PROPOSAL HAS BEEN REVIEWED FOR CODE COMPLIANCE, PLAN CONFORMITY AND COMPLETENESS IN ACCORDANCE WITH THIS AGENCY'S AUTHORITY AND AREA OF EXPERTISE.

THE FOLLOWING ITEMS HAVE BEEN IDENTIFIED AS ELEMENTS WHICH NEED TO BE ADDRESSED BY THE APPLICANT:

ORDINANCE #2024-29

CITY AND STATE CODE REQUIREMENTS

SANITATION / STREETS / STORMWATER / WATER / WASTEWATER / GENERAL

1. Our office has no objections to the proposed text amendments

RECOMMENDATIONS SUGGESTED AS CONDITIONS OF APPROVAL TO MEET CODE OBJECTIVES

SANITATION / STREETS / STORMWATER / WATER / WASTEWATER / GENERAL

1. None

ADVISORY COMMENTS TO THE APPLICANT

SANITATION / STREETS / STORMWATER / WATER / WASTEWATER / GENERAL

1. None

ORDINANCE #2024-30

CITY AND STATE CODE REQUIREMENTS

SANITATION / STREETS / STORMWATER / WATER / WASTEWATER / GENERAL

1. Our office has no objections to the proposed text amendments

RECOMMENDATIONS SUGGESTED AS CONDITIONS OF APPROVAL TO MEET CODE OBJECTIVES

SANITATION / STREETS / STORMWATER / WATER / WASTEWATER / GENERAL

1. None

ADVISORY COMMENTS TO THE APPLICANT

SANITATION / STREETS / STORMWATER / WATER / WASTEWATER / GENERAL

1. None

IF YOU HAVE ANY QUESTIONS OR NEED TO DISCUSS ANY OF THE ABOVE COMMENTS, PLEASE CALL THE ABOVE CONTACT PERSON AND THE PLANNING DEPARTMENT AS SOON AS POSSIBLE.

CITY OF DOVER ELECTRIC
DEVELOPMENT ADVISORY COMMITTEE
APPLICATION REVIEW COMMENTARY

STAFF D.A.C. MEETING DATE: OCT 30, 2024

APPLICATION: Text Amendments: Recreational Marijuana Land Uses and Related Zoning Regulations

FILE #: MI-24-09

REVIEWING AGENCY: City of Dover Electric Department

CONTACT PERSON: Shawn Burgett, Engineering Services & System Ops Superintendent

CONTACT PHONE #: 302-674-7568

CONTACT EMAIL #: sburgett@dover.de.us

THE SUBJECT PROPOSAL HAS BEEN REVIEWED FOR CODE COMPLIANCE, PLAN CONFORMITY AND COMPLETENESS IN ACCORDANCE WITH THIS AGENCY'S AUTHORITY AND AREA OF EXPERTISE.

THE FOLLOWING ITEMS HAVE BEEN IDENTIFIED AS ELEMENTS WHICH NEED TO BE ADDRESSED BY THE APPLICANT:

CITY AND STATE CODE REQUIREMENTS

ELECTRIC

1. The Electric Department has no objections to the amendment text of Ordinance #2024-29 and Ordinance #2024-30.

RECOMMENDATIONS SUGGESTED AS CONDITIONS OF APPROVAL TO MEET CODE OBJECTIVES

1. None

ADVISORY COMMENTS TO THE APPLICANT

1. None

IF YOU HAVE ANY QUESTIONS OR NEED TO DISCUSS ANY OF THE ABOVE COMMENTS, PLEASE CALL THE ABOVE CONTACT PERSON AND THE PLANNING DEPARTMENT AS SOON AS POSSIBLE.

CITY OF DOVER
DEVELOPMENT ADVISORY COMMITTEE
APPLICATION REVIEW COMMENTARY
D.A.C. MEETING DATE: 11/6/2024

**Dover/Kent
County
Metropolitan
Planning
Organization**

MI-24-09 Text Amendments: Recreational Marijuana Land Uses and Related Zoning Regulations

FILE # MI-24-09

REVIEWING AGENCY: Dover/Kent County MPO

CONTACT PERSON: Malcolm Jacob

PHONE #: (302) 387-6030

Issues of concern to the MPO are effective transit, reducing the amount of vehicle emissions by shortening or eliminating trips, and facilities for alternative modes of transportation, including bicycle and pedestrian access. The MPO considers the bicycle facilities required by the City of Dover to be the standard for all applications, not to be waived.

City of Dover Planning Commission
Text Amendment Review

MI-24-09 Text Amendments: Recreational Marijuana Land Uses and Related Zoning Regulations

Dover Kent MPO does not typically provide comments on text amendments, unless it pertains directly to transportation planning. The only suggestion from the MPO is to consider the impact of the regulations on access to retail facilities. Many of Dover's residents do not own a personal vehicle, which makes it harder for them to reach and travel along US13. Because the "equity focus areas" identified by DelDOT are more likely to have zero-vehicle households, the MPO recommends looking at the Equity Analysis Tool to better understand which neighborhoods may have impaired access to the new retail facilities. This is important in terms of employment along the US13 corridor, particularly for those who cannot drive to work. Referring to DART's existing and future bus networks, and the most recent US Census Bureau data, can also help in studying these access gaps. Please see the link below for the Equity Analysis Tool.

<https://deldot.maps.arcgis.com/apps/webappviewer/index.html?id=e051d6e4313142dfb8b03205e511f661>

If you have any questions or need to discuss any of the above comments, please call the above contact person and the Planning Department as soon as possible.

