



The Maryland-National Capital Park and Planning Commission  
**Office of the General Counsel**

1616 McCormick Drive, Suite 3133, Largo, MD 20774 • www.mncppc.org

February 13, 2024

**TECHNICAL STAFF REPORT**

TO: Prince George's County Planning Board

FROM: Laura Tallerico, Esq., Associate General Counsel

SUBJECT: Legislative Drafting Request LDR-27-2024  
Proposed Cannabis Use Regulations

The Office of General Counsel (OGC), in conjunction with Planning Department Staff, reviewed proposed legislative amendment to the Zoning Ordinance and present the following evaluation and findings leading to a recommendation of OPPOSE, as described in the Recommendation section of this technical staff report. LDR-27-2024 is one of two legislative drafting requests that would update the Zoning Ordinance to regulate recreational cannabis uses. The other is LDR-18-2024. As discussed in this report, OGC and Planning Department Staff are recommending that the Planning Board support LDR-18-2024 over LDR-27-2024 because it better complies with the requirements of state law governing zoning for cannabis dispensary uses. LDR-18-2024 is also more consistent with the recommendations of *Plan Prince George's 2035* and the purpose and intent of the zones in the Zoning Ordinance.

**I. EVALUATION CRITERIA**

Proposed legislative amendments to the Zoning Ordinance are reviewed under the requirements of Section 27-3501, Legislative Amendment, of the Prince George's County Zoning Ordinance. Staff considered the following in reviewing this proposed legislative amendment:

- A. Prince George's County Zoning Ordinance;
- B. Maryland Cannabis Reform Act;
- C. *Plan Prince George's 2035 Approved General Plan*;
- D. Current Area Master Plans, Sector Plans, and Functional Master Plans for Prince George's County;
- E. Prince George's County Climate Action Plan; and
- F. Referral comments.

## II. BACKGROUND

**A. Purpose:** LDR-27-2024 is a proposal to amend the Prince George’s County Zoning Ordinance to implement the legalization of adult-use cannabis businesses across the State via the Maryland Cannabis Reform Act (“MCRA”).

By way of background, the MCRA allows for the following medical and adult use cannabis licenses to be issued by the Maryland Cannabis Administration (“MCA”): 1) Standard Grower; 2) Micro-Grower; 3) Standard Processor; 4) Micro-Processor; 5) Standard Dispensary; 6) Micro-Dispensary; 7) On-site Consumption Establishment<sup>1</sup>; and 8) Incubator. The MCA was required to begin issuing a first round of licenses on January 1, 2024, followed by a second round on May 1, 2024.

The MCRA allows local jurisdictions to impose zoning regulations on cannabis uses so long as those regulations do not “unduly burden” cannabis licensees. Md. Code Ann., Alc. Bev. & Can. § 36-405(B)(1). “Unduly burden” is not currently defined in the MCRA. A bill (HB 805/ SB 537) is pending before the General Assembly that will clarify the term.

The MCRA also imposes setbacks on cannabis dispensaries, which are as follows: 1) 500 feet from: a) A playground, recreation center, library, or public park; b) primary or secondary schools; and c) licensed childcare centers or registered family childcare home; and 2) 1,000 feet from another Cannabis Dispensary or Micro-Dispensary. The MCRA expressly allows local jurisdictions to reduce these setbacks, but is silent as to whether they may be increased. This indicates that increasing the setbacks may not be permissible. Additionally, any setback imposed through zoning regulations may not unduly burden a cannabis licensee.

In addition to providing for new adult-use cannabis licenses, the MCRA allowed existing licensed medical growers, processors, and dispensaries to convert their licenses to medical and adult-use licenses effective July 1, 2023. The MCRA also allows holders of certain State medical cannabis “preapprovals” to begin conducting business without requiring local approval.<sup>2</sup>

Finally, the MCRA includes several provisions aimed at promoting equity in the cannabis industry. The “micro” versions of each license type are intended to provide opportunities for small businesses. Additionally, in each tranche of licenses issued by the State, a certain portion are reserved for qualified social equity applicants. Finally, the MCRA provides for cannabis incubators, which are facilities that can house multiple cannabis micro-licensees. These are intended to minimize the capital required to start up a small cannabis business.

---

<sup>1</sup> Local jurisdictions are permitted to prohibit On-Site Consumption Establishments through zoning.

<sup>2</sup> The preapproval authority is known as “State Stage 1” and was granted for proposed medical cannabis businesses. If the business was not operational as of October 1, 2022, the MCRA allows the holder to operate a medical and adult use cannabis business without obtaining approval from a “county or municipal zoning board, authority or unit.” Md Code Ann., Alc. Bev. & Cann. § 36-405 (c)(2). Staff is aware of at least one holder of a Stage 1 preapproval in the County.

**B. Impacted Property:** This bill will impact properties in the AG, AR, IE, and IH zones. Maps are attached to this staff report depicting the properties on which the various cannabis uses would be allowed should this bill pass (Attachment 1).

**C. Policy Analysis:** The Zoning Ordinance currently allows the following cannabis related uses: 1) “Medical Cannabis Grower and/or Processor;” and 2) “Medical Cannabis Dispensary.” These uses are defined in a manner that contemplates growing, processing, and selling cannabis pursuant to a medical license, but not for recreational use. Because the Zoning Ordinance does not include recreational cannabis uses, they are prohibited. Zoning Ordinance § 27-5101(a)(1). As noted, the MCRA disallows unduly burdening cannabis licensees through zoning. Prohibiting all adult-use cannabis licensees from locating in the County would, therefore, certainly be viewed as an undue burden. How permissive the County must be, however, remains an open question.

LDR-27-2024 creates new uses that correspond to the various license types under the MCRA, as follows: 1) Cannabis Grower; 2) Cannabis Micro-Grower; 3) Cannabis Processor; 4) Cannabis Micro-Processor; 5) Cannabis Dispensary; 6) Cannabis Micro-Dispensary; and 7) Cannabis On-site Consumption Establishment. Each of these uses has the same definition as the corresponding license type under the MCRA.

LDR-27-2024 also provides zoning regulations for each of the new cannabis uses, as follows. Most of the use standards are carried over from the medical cannabis predecessors of each use.

Cannabis Grower/Cannabis Micro-Grower: Permitted in the IE, AG, and AR zones subject to a 300-foot setback from the following:

- The RE, RR, RSF-95, RSF-65, and R-PD zones;
- A playground, recreation center, library, or public park;
- Primary or secondary schools; and
- Licensed childcare centers or registered family childcare homes.

Additional standards regarding setbacks, minimum net lot area requirements, and signage are provided. Cannabis Grower/Cannabis Micro-Grower are also not permitted as accessory uses.

Cannabis Processor/ Cannabis Micro-Processor: Permitted in the IE and IH zone subject to a 300-foot setback from:

- The RE, RR, RSF-95, RSF-65, and R-PD zones;
- A playground, recreation center, library, or public park;
- Primary or secondary schools; and

- Licensed childcare centers or registered family childcare homes.

Additional standards regarding setbacks, minimum net lot area, and signage are provided. Cannabis Processor and Cannabis Micro-Processor are also not permitted as accessory uses.

Cannabis Dispensary/Cannabis Micro-Dispensary: Permitted in the IE and IH zones subject to the following setbacks:

- 300 feet from the RE, RR, RSF-95, RSF-65, and R-PD zones;
- 500 feet from:
  - A playground, recreation center, library, or public park;
  - Primary or secondary schools; and
  - Licensed childcare centers or registered family childcare home; and
- 1,000 feet from another Cannabis Dispensary or Micro-Dispensary.

Additional standards for signage are included. Both Cannabis Dispensary and Cannabis Micro-Dispensary are not permitted as accessory uses. In addition, for Cannabis Dispensaries, LDR-27-2024 would: 1) prohibit on-site consumption of cannabis; and 2) limit business hours to 12 hours between 8:00am and 10:00pm.

Cannabis On-Site Consumption Establishment: Prohibited in all zones, as allowed by the MCRA.

Cannabis Incubator: LDR-18-2024 defines “Cannabis Incubator” as “a facility within which Cannabis Micro-Grower, Cannabis Micro-Processor, and Cannabis Micro-Dispensaries may co-locate. Because Cannabis Micro-Grower, Cannabis Micro-Processor, and Cannabis Micro-Dispensary may all locate in the IE zone, Cannabis Incubators effectively may locate in the IE zone, subject to the setback requirements for Cannabis Micro-Grower, Cannabis Micro-Processor, and Cannabis Micro-Dispensaries noted above.

LDR-27-2024 also provides parking requirements for all cannabis uses, which are largely the same as the parking for the existing medical cannabis uses. Only Cannabis Micro-Dispensary has new parking standards because, unlike a Cannabis Dispensary, it will operate through a delivery service and, therefore, will require less parking.

As noted above, the MCRA allowed existing medical cannabis businesses to convert their licenses to medical and adult-use effective July 1, 2023. LDR-27-2024 provides grandfathering for existing medical cannabis uses that converted their licenses to medical and adult use licenses. Specifically, it states that the law

shall apply prospectively and “uses that were permitted and existing as of July 1, 2023 shall be deemed permitted uses and not nonconforming.”

### III. COMPLIANCE WITH EVALUATION CRITERIA

Section 27-3501(c)(2)(B) requires issuance of a Technical Staff Report on any proposed legislative amendment to the Zoning Ordinance by the Planning Director within 14 calendar days of the transmittal of the proposed amendment by the Clerk of the Council. This Section also requires, at minimum, analysis of the extent to which the proposed legislative amendment complies with six criteria.

A. This proposed legislative amendment meets some, but not all the requirements of Section 27-3501(c)(2)(B) as follows:

- (i) **Is consistent with the goals, policies and strategies of Plan Prince George’s 2035 (or any successor General Plan), area master plans, sector plans, functional master plans, and any other applicable approved plans;**

The Planning Department’s Community Planning Division has provided the following analysis on the consistency of LDR-27-2024 with the General Plan. LDR-27-2024 clarifies definitions, permissions, and locational restrictions around the production, processing, and sale of cannabis products and permits the sale/dispensation of cannabis products, limiting sales to the industrial zones.

Restricting cannabis sales to industrial areas limits the ability of Prince Georgians to access cannabis products, creating scenarios where customers travel out of the County, or to those limited industrial areas within the County, to acquire a product they are legally able to own and use. This will not reduce demand for these products and will only increase incidences of single-occupant vehicle travel, which runs counter to Plan 2035’s vision for “a competitive, innovative, and adaptive economy” and “vibrant and walkable mixed-use centers.”

In evaluating LDR-27-2024 in the context of the proposed combination of medical cannabis and other cannabis sales, it is important to evaluate the impact of limiting cannabis dispensaries to industrial areas. Limiting locations makes access to health services for those prescribed cannabis more difficult, contradicting Plan 2035 Policy HC4 (improve access to health services) and increases the costs of implementing Strategy TM9.1, evaluating the use of on-demand transportation services to ensure reliable access to health care facilities.

This bill implements Plan 2035’s Land Use Goal of expanding the County’s commercial tax base, although at a significantly lesser scale than what is proposed in LDR-18-2024. The limitation of cannabis sales and dispensation to industrial zones creates barriers in facilitating small business development in

the context of Economic Prosperity Strategy EP6.5 (“comprehensive review of County Code provisions specific to the operation of small businesses—including licensing, permitting and inspections, and zoning and subdivision regulations—to facilitate and support small business development”) in comparison to LDR-18-2024.

**(ii) Addresses a demonstrated community need;**

The Planning Department’s Community Planning Division has provided the following analysis on the community need for cannabis businesses in the County:

Recreational Cannabis: According to the Maryland Behavioral Health Risk Factor Surveillance System (BRFSS), as reported in the Maryland Medical Cannabis Commission’s Maryland Cannabis Use Baseline Study (March 1, 2023), in 2021, 8.7 percent of Prince Georgians reported using cannabis products within the preceding 30 days of being surveyed. It is possible that this figure underrepresents cannabis usage in Prince George’s County.

Medical Cannabis: When considering cannabis uses in the context of prescription cannabis, increasing the diversity and breadth of locations where patients can obtain their legally prescribed medication meets a more pressing and important community need. Limiting the ability of Prince Georgians to obtain legally prescribed medication runs counter to the goals of Plan 2035 to improve and enhance quality of life for all Prince Georgians.

Associated Needs: Nothing in the comments above should be construed as ignoring the need to find ways to discourage the smoking of cannabis products, which has negative health impacts on both smokers and those nearby, and to strictly enforce existing laws on driving under the influence of cannabis or other drugs. These topics are not zoning-related.

**(iii) Is consistent with the purpose and intent of the zones in this Ordinance, or would improve compatibility among uses and ensure efficient development within the County;**

Cannabis Grower and Cannabis Micro-Grower would be permitted in the AG, AR, and IE zones. This is consistent with the purposes of those zones. The AG is intended to “promote the economic use and conservation of agriculture” and the AR zone “encourage[es] the retention of agriculture as a primary land use.” As agricultural uses, the cannabis grower uses are appropriate for both these zones. The IE zone is intended: “provide for a mix of employment, research and development, and light industrial development.” Unlike other agricultural uses, cannabis is frequently grown indoors in warehouse-like structures commonly associated with industrial areas. Additionally, cannabis growers are anticipated to provide employment opportunities.

Cannabis Processor and Cannabis Micro-Processor would be permitted in the IE and IH zones. As noted, the IE zone is intended: “provide for a mix of employment, research and development, and light industrial development.” The IH zone is intended to “provide lands for intense industrial development that generally requires large sites” and “generally involve greater potential for adverse off-site impacts on the environment and surrounding development.” Cannabis processors transform cannabis into another product or extract. This activity is appropriate for and consistent with the purposes of both the IE and IH zones.

Cannabis Dispensary and Micro-Dispensary would be permitted in the IE and IH zones. As noted above, the IE and IH zones are intended for “employment, research and development” and “intense industrial development” respectively. While Cannabis Dispensary and Micro-Dispensary uses arguably further the purposes of the IE zone in that they provide employment opportunities, they are generally not consistent with the purpose of the IH zone in that they are categorized as “retail sales and service” uses and the IH zone is reserved for intense industrial development. The Council should consider whether Cannabis Dispensary and Cannabis Micro-Dispensary uses should be permitted in zones intended for retail sales and service uses. These include the CN, CS, and CGO zones. Medical Cannabis Dispensary uses are also currently permitted as a special exception in the LTO (edge), RTO-L (edge), and RTO-H (edge) zones and these zones should be considered for cannabis dispensary uses as well.

Setbacks: As noted above, each of the new cannabis uses must setback from residential zones and certain sensitive land uses, including schools, parks, and libraries. These setbacks are intended to improve compatibility between uses by separating cannabis uses from residences and locations frequented by minors.

**(iv) Is consistent with the implementation of the strategies and priority recommendations of the Prince George’s County Climate Action Plan;**

LDR-27-2024 will have minimal impact, if any, on the Prince George’s County Climate Action Plan (CAP). However, the CAP prioritizes “preserving and restoring [...] agricultural open space to reduce flood risk.” (CAP pg. 106) LDR-27-2024 will assist with this by permitting two new agricultural uses, Cannabis Grower and Cannabis Micro-Grower, in the AR and AG zones.

**(v) Is consistent with other related State and local laws and regulations; and**

As noted above, the MCRA allows counties to impose zoning regulations on cannabis uses so long as those regulations will not “unduly burden” cannabis licensees. State law does not define “unduly burden” and Maryland courts have only once opined on what constitutes an “undue burden” in the zoning context in *St. Clair v. Colonial Pipeline Co.*, 235 Md. 578 (1964). This case provides a helpful framework for drafting zoning regulations that will address public

health, safety, and welfare but not unduly burden a cannabis licensee. In particular, *St. Clair* suggests that zoning regulations may be unduly burdensome if they go beyond addressing the potential harms associated with the use or do not provide suitable locations for such uses. In this context, LDR-18-2024's compliance with the MCRA is evaluated as follows.

Cannabis Grower/ Cannabis Micro-Grower: Cannabis Grower and Cannabis Micro-Grower are agricultural uses. LDR-27-2024 provides many potentially suitable locations for these uses in the agricultural zones (AR and AG), as well as the IE zone. It addresses potential harms by requiring Cannabis Grower and Cannabis Micro-Grower uses to locate at least 300 feet from certain incompatible uses. Additional setbacks from property lines are provided. Even with these additional setbacks, LDR-27-2024 likely will not unduly burden these uses as depicted on Map #1.

Cannabis Processor/Micro Cannabis Micro-Processor: Cannabis Processor and Cannabis Micro-Processor are industrial uses. LDR-27-2024 provides many potentially suitable locations for these uses in the industrial zones (IE and IH), subject to a 300-foot setback from certain incompatible uses. Additional setbacks from property lines are provided. Even with these additional setbacks, LDR-27-2024 likely will not unduly burden these uses as depicted on Map #2.

Cannabis Dispensary/Cannabis Micro-Dispensary: Cannabis Dispensary and Cannabis Micro-Dispensary are retail and service uses, which are most suited to being located in commercial or mixed-use zones. However, LDR-27-2024 limits these uses to industrial zones subject to certain setbacks. Map #3 indicates that, this will result in limited locations for cannabis dispensaries in the County. Additionally, as noted above, Cannabis Dispensary and Cannabis Micro-Dispensary are retail sales and service uses, which are more suited to commercial and mixed-use zones than to industrial zones. The sponsors of LDR-27-2024 should consider widening the zones in which the cannabis dispensary uses may locate to avoid a claim that the bill unduly burdens cannabis licensees by restricting them to industrial areas. As noted above, the CN, CS, CGO, LTO (edge), RTO-L (edge), and RTO-H (edge) zones would be appropriate for dispensary uses.

As noted above, the MCRA provides setbacks for cannabis dispensaries. The MCRA expressly allows local jurisdictions to reduce these setbacks, but does not say whether they may be increased. Thus, it is arguable that the setbacks may not be increased. LDR-27-2024 applies the setbacks from state law to both cannabis dispensaries and cannabis micro-dispensaries.

The District Council should consider reducing the setbacks for Cannabis Micro-Dispensaries to 500-foot setbacks from the incompatible uses listed at page 26, line 28 through page 27, line 4 to 300 feet consistent with the Cannabis Micro-Processor and Cannabis Micro-Grower. Cannabis Micro-Dispensaries do not have a storefront and will operate through a delivery service only. Therefore, there may be fewer potential harms associated with Cannabis Micro-



Dispensaries compared to Cannabis Dispensaries. Additionally, Cannabis Micro-Dispensaries are intended to provide small business opportunities to promote equity in the cannabis industry.

Cannabis On-Site Consumption Establishment: CB-27-2024 would prohibit Cannabis On-Site Consumption Establishments in all zones. The MCRA expressly allows local jurisdictions to do so; therefore, they are not subject to the undue burden requirement.

Cannabis Incubator: As noted above, Cannabis Incubators may locate in the IE zone subject to the underlying setback restrictions for the Cannabis Micro-Dispensary, Cannabis Micro-Grower, and Cannabis Micro-Processor uses. GIS mapping indicates that the locations available for a Cannabis Incubator are very limited. (See Map #4) In order to assist small businesses, the District Council may want to consider either: 1) creating a separate Cannabis Incubator use and allow it in more zones such as CGO; or 2) widening the zones in which the Cannabis Micro-Dispensary, Cannabis Micro-Grower, and Cannabis Micro-Processor uses are permitted.

Grandfathering: Finally, the MCRA also allowed existing medical cannabis licensees to convert their licenses to medical and adult-use and continue operating on July 1, 2023. LDR-27-2024 appropriately grandfathers these uses by stating that it only applies prospectively and uses existing and permitted, as of July 1, 2023, are deemed permitted and not nonconforming.

- (vi) **Would avoid creating significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.**

LDR-27-2024 is not anticipated to have any adverse impact on the natural environment. Cannabis uses will have to comply with all applicable Federal, State, and local environmental laws.

- B. Pursuant to Section 27-3501(c)(2)(C), this Technical Staff Report “**shall contain an independent, non-substantive assessment of the technical drafting conventions of the proposed legislative amendment, in order to ensure consistency with the legislative style and conventions of the current Zoning Ordinance.**” As such:

LDR-27-2024 conforms to the legislative style and conventions of the current Zoning Ordinance. Technical Staff have no comments in this respect.

- C. Finally, Section 27-3501(c)(2)(D) requires the Planning Board to make a recommendation on the proposed amendment in accordance with the Legislative Amendment Decision Standards that guide the District Council’s final decision on the approval of a proposed legislative amendment. Staff has reviewed LDR-27-2024 for consistency with Section 27-3501(d), Legislative Amendment Decision Standards, of the Zoning Ordinance. Staff find the following:

**The advisability of amending the text of this Ordinance is a matter committed to the legislative discretion of the County Council sitting as the District Council and is not controlled by any one factor. Within each zone listed in the Classes of Zones (Section 27-4102), the (D)istrict (C)ouncil may regulate the construction, alteration, and uses of buildings and structures and the uses of land, including surface, subsurface, and air rights. The provisions for each zone shall be uniform for each class or kind of development throughout the zone, and no legislative amendment may create different standards for a subset of properties within a zone, unless such standards are necessary to implement development policies within the applicable Area Master Plan, Sector Plan, development policies of the General Plan, or other approved development district; however, any differentiation of a subset of properties within a zone shall be reasonable and based upon the public policy to be served.**

Planning Staff take no position as to the legislative discretion of the District Council. However, staff find that LDR-27-2024 meets the criteria that the provisions for each zone shall be uniform for each class or kind of development throughout the zone. The proposed amendments contained in LDR-27-2024 would be consistently applied to each affected zone across the County.

However, LDR-27-2024 can be argued to create different subsets of properties within the AG, AR, CS, CGO, IE and IH zones in that the various cannabis uses will only be permitted to located on properties in these zones which meet the proposed setback requirements. However, this differentiation is reasonable and based on the public policy of separating cannabis uses from certain sensitive uses (i.e., parks and schools) and residential zones.

Staff recommend the Planning Board find that LDR-27-2024 is consistent with the Legislative Amendment Decision Standards specified in Section 27-3501(d) of the Zoning Ordinance.

#### **IV. PLANNING BOARD PUBLIC HEARING**

Section 27-3501(c)(2)(D) requires the Prince George's County Planning Board to hold a public hearing and make comments on the proposed legislative amendment within 30 days of the date of the transmittal of the Clerk of the Council. Said public hearing must be noticed by electronic mail at least 21 days prior to the public hearing, sent to every community organization in the County that has registered to receive notice pursuant to Section 27-3407(b)(3), and to any person or organization registered pursuant to Section 27-3402(d).

Notice for the public hearing on LDR-27-2024 was sent on February 1, 2024, as required by the Zoning Ordinance. The Planning Board public hearing will be held on February 22, 2024, thus meeting the notice requirement of the Zoning Ordinance.

Comments offered by the public prior to and during the Planning Board’s public hearing will be summarized, along with the Planning Board’s comments, in the Board’s recommendation to the Clerk of the Council.

## **V. PROPOSED AMENDMENTS**

Following review of LDR-27-2024 and based on comments received at the Planning Board public hearing, staff recommend the Planning Board oppose LDR-27-2024. However, should the District Council decide to move forward with LDR-27-2024, staff recommend the Planning Board support the following amendments to LDR-27-2024 and transmit said amendments with the Board’s recommendation on the proposed legislative amendment:

- At pg. 14, consider allowing Cannabis Dispensary and Cannabis Micro-Dispensary in the CN, CS, CGO, LTO (edge), RTO-L (edge) and RTO-H (edge zones).
- At pg. 26, ln. 28 through pg. 27, ln. 4, reduce the required setback from 500 feet to 300 feet for Cannabis Micro-Dispensaries.
- At pg. 27 ln. 24–28, LDR-27-2024 requires minimum setbacks and lot sizes for Cannabis Processors in the AG zone. Because Cannabis Processor is not permitted in the AG zone, these should be deleted.
- At pg. 28 ln. 12–15, LDR-27-2024 requires minimum setbacks for Cannabis Micro-Processors in the AG zone. Because Cannabis Micro-Processor is not permitted in the AG zone, these should be deleted.
- Consider creating a separate Cannabis Incubator use and allowing it in the IE and CGO zones subject to the same setbacks as Cannabis Micro-Grower and Cannabis Micro-Processor.

## **VI. RECOMMENDATION**

Based upon the foregoing evaluation and analysis, the Planning Department’s legislative team recommend that the Planning Board adopt the findings of this report and OPPOSE of LDR-27-2024, as the competing bill, LDR-18-2024, better complies with the requirements of state law governing zoning for cannabis dispensary uses. LDR-18-2024 is also more consistent with the recommendations of *Plan Prince George’s 2035* and the purpose and intent of the zones in the Zoning Ordinance