

## City of Arnold, Missouri

**Work Session  
Council Chamber**

**July 11, 2019  
7:00 p.m.**

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### **Agenda**

1. Cochran Engineering
  2. Building Upgrades at Public Works Facility
  3. Golf Course and Arnold Park Flood Damage Assessment
  4. Medical Marijuana Regulations
  5. Adjournment
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### **Section 110.270 Special Council Meeting**

#### **Special Council Meeting**

### **Agenda**

1. Roll Call
2. A Motion to Hold a Closed Session for the Purpose of Discussion Personnel Pursuant to RSMo Section 610.021 (3).
3. Adjournment

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI,  
AMENDING CHAPTER 405 OF THE ARNOLD CODE OF ORDINANCES  
(MARIJUANA RELATED USES AND TOBACCO, NICOTINE, AND OTHER  
LEGAL SUBSTANCE ESTABLISHMENTS)**

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WHEREAS, an amendment to Missouri's constitution was approved by voters on November 6, 2018 allowing access to Medical Marijuana in Missouri; and

WHEREAS, the Federal Controlled Substance Act, 21 U.S.C. 801 et seq., the use, possession and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, the United States Department of Justice issued a Memorandum entitled "Guidance for Marijuana Enforcement" on August 29, 2013. The memorandum established eight guidelines for states regarding the federal priorities in determining whether federal enforcement should commence against those engaged in specific activities related to marijuana cultivation and distribution. This ordinance places the highest priority on meeting these guidelines, particularly those related to public safety and health, restrictions on availability to minors, and prevention of illegal trafficking and profiteering; and

WHEREAS, Marijuana plants, as they begin to flower and for a period of two months or more during the growing season, produce an extremely strong odor that is detectable far beyond property boundaries and that can adversely impact the peace and enjoyment of nearby properties; and

WHEREAS, the City Council of the City of Arnold desires to amend Chapter 405 of the Arnold Code of Ordinances; and

WHEREAS, the proper public hearings have been held, pursuant to City Ordinance and the laws of the state of Missouri; and

WHEREAS, the Planning Commission has submitted its report and recommendation to the City Council on the proposed amendments to Chapter 405 of the Arnold Code of Ordinances; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI, AS FOLLOWS:

**SECTION 1.** Section 405.060 of the Arnold Code of Ordinances is hereby amended to add the following definitions:

**“MARIJUANA OR MARIHUANA**  
Means Cannabis indica, Cannabis sativa, and Cannabis ruderalis, hybrids of such species, and any other strains commonly understood within the scientific community to constitute marijuana, as well as seed thereof and resin extracted from the plant and marijuana-infused products. Marijuana does not include industrial hemp containing a crop-wide average tetrahydrocannabinol concentration that does not exceed three-tenths of one percent on a dry weight basis, or commodities or products manufactured from industrial hemp.

**MARIJUANA-INFUSED PRODUCTS**

Any product that is infused with marijuana or an extract thereof and is intended for use or consumption other than by smoking, including, but not limited to, edible products, ointments, tinctures and concentrates.

**MEDICAL MARIJUANA CULTIVATION FACILITY**

Any facility licensed by the State of Missouri to acquire, cultivate, process, store, transport, and sell marijuana to a Medical Dispensary Facility, Medical Marijuana Testing Facility, or to a Medical Marijuana-Infused Products Manufacturing Facility.

**MEDICAL MARIJUANA CULTIVATION FACILITY, INDOOR**

Any medical marijuana cultivation facility, as defined herein, where the cultivation of marijuana occurs within an enclosed structure.

**MEDICAL MARIJUANA CULTIVATION FACILITY, OUTDOOR**

Any medical marijuana cultivation facility, as defined herein, where the cultivation of marijuana occurs outside of an enclosed structure.

**MEDICAL MARIJUANA DISPENSARY FACILITY**

Means a facility licensed by the State of Missouri to acquire, store, sell, transport, and deliver marijuana, marijuana-infused products and drug paraphernalia used to administer marijuana as provided for in this section to a qualifying patient, a primary caregiver, another Medical Marijuana Dispensary Facility, a Medical Marijuana Testing Facility, or a Medical Marijuana-Infused Projects Manufacturing Facility.

**MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURING FACILITY**

Means a facility licensed by the State of Missouri, to acquire, store, manufacture, transport, and sell marijuana-infused products to a Medical Marijuana Dispensary Facility, a Medical Marijuana Test Facility, or to another Medical Marijuana-Infused Projects Manufacturing Facility.

**MEDICAL MARIJUANA TESTING FACILITY**

Means a facility certified by the State of Missouri, to acquire, test, certify, and transport marijuana.

**MEDICAL MARIJUANA-RELATED ENTITIES**

Any establishment operating or transacting business as a medical marijuana dispensary facility, medical marijuana cultivation facility, medical marijuana-infused product manufacturing facility, medical marijuana testing facility, or other medical marijuana-related entity.

**TOBACCO, NICOTINE, AND OTHER LEGAL SUBSTANCE ESTABLISHMENT**

A specialty retail establishment that has, as a substantial or significant portion of its stock in trade, smoking- and/or vapor inhalation-related accessories, such as pipes, pipe cleaners, lighters, butane, flints, cigar nippers, electronic/vapor substance inhalation products, commonly known as "electronic cigarettes," "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," "electronic nicotine delivery systems," and other similar devices, as well as such cartridges, substances and additives used to experience the sensation of smoking vapors, tobacco and non-tobacco substances, exclusive of items identified as controlled substances or drug paraphernalia in Chapter 215, Article XI of the Municipal Code. Lounges or public rooms where customers or members of the public may inhale vapor, smoke, or otherwise consume such products as identified herein, may only be as allowed when specifically authorized in an approved Conditional Use Permit.”

**SECTION 2.** Section 405.310.A.2. of the Arnold Code of Ordinances is hereby amended to add the following:

“j. Tobacco, Nicotine, and Other Legal Substance Establishment (*See Section 405.380*).”

**SECTION 3.** Section 405.320.A.2. of the Arnold Code of Ordinances is hereby amended to add the following:

“aa. Tobacco, Nicotine, and Other Legal Substance Establishment (*See Section 405.380*).”

**SECTION 4.** Section 405.330.A.2. of the Arnold Code of Ordinances is hereby amended to add the following:

“w. Tobacco, Nicotine, and Other Legal Substance Establishment (*See Section 405.380*).”

**SECTION 5.** Section 405.330.A.2. of the Arnold Code of Ordinances is hereby amended to add the following:

“aa. Medical Marijuana Dispensary Facilities (*See Section 405.380*).”

**SECTION 6.** Section 405.340.B. of the Arnold Code of Ordinances is hereby deleted in its entirety and substituting in lieu the following:

“B. *Permitted Land Uses and Developments.*

1. In a planned commercial district, the uses permitted shall only be:

- a. Those designated as a permitted use in any of the "C" Commercial Districts; and
- b. Those designated as conditional use in any of the "C" Commercial Districts subject to procedures contained in Section 405.870,

Conditional Use Permits, of the Zoning Ordinance.

2. The specific ordinance authorizing the establishment of a particular planned commercial district related to a specific tract of land may further limit the uses permitted on the tract.”

**SECTION 7.** Section 405.350.A.1. of the Arnold Code of Ordinances is hereby amended to add the following:

“o. Medical Marijuana Entities, except dispensaries (*See Section 405.380*)”

**SECTION 8.** Section 405.360.B. of the Arnold Code of Ordinances is hereby amended to add the following:

“13. Medical Marijuana Entities, except dispensaries (*See Section 405.380*)”

**SECTION 9.** Section 405.370.B. of the Arnold Code of Ordinances is hereby deleted in its entirety and substituting in lieu the following:

“B. *Permitted Land Uses and Developments.*

1. In a planned industrial district, the uses permitted shall only be:
  - a. Those designated as a permitted use in any of the "M" Industrial Districts or "C" Commercial Districts as may be specifically related to a particular industrial activity or complex; and
  - b. Those designated as conditional use in any of the M” Industrial Districts or "C" Commercial Districts as may be specifically related to a particular industrial activity or complex subject to procedures contained in Section 405.870, Conditional Use Permits, of the Zoning Ordinance.
2. The specific ordinance authorizing the establishment of a particular planned industrial district related to a specific tract of land may further limit the uses permitted on the tract.”

**SECTION 10.** Section 405.380, *Use Standards*, is hereby amended to add the following:

“B. Tobacco, Nicotine, and Other Legal Substance Establishment. Tobacco, nicotine, and other legal substance establishments, as defined in section 405.060, shall meet the following standards in addition to all other zoning requirements in order to operate within the City of Arnold:

1. No tobacco, nicotine, and other legal substance establishment shall be located on a parcel, which is within one thousand (1,000) feet of another tobacco, nicotine, and other legal substance establishment is located, including such establishments located outside of the City limits.

Such distances referred to above shall be measured by the methodology established by the Missouri Department of Health and Senior Services Division of Regulation and Licensure for medical marijuana-related entities and protected uses. For the purposes of this measurement, tobacco, nicotine, and other legal substance establishments shall be subject to the proximity criteria for medical marijuana-related entities.

2. No tobacco, nicotine, and other legal substance establishment shall be operated or maintained within two hundred fifty (250) feet of primary or secondary schools, residentially zoned districts or any public park.

Such distances referred to above shall be measured by the methodology established by the Missouri Department of Health and Senior Services Division of Regulation and Licensure for medical marijuana-related entities and protected uses. For the purposes of this measurement, tobacco, nicotine, and other legal substance establishments shall be subject to the proximity criteria for medical marijuana-related entities.

- C. Medical Marijuana-Related Entities. Medical marijuana-related entities, as defined in section 405.060, shall meet the following standards in addition to all other zoning requirements in order to operate within the City of Arnold:

1. No medical marijuana dispensary facility may be located within one thousand (1,000) feet of another medical marijuana dispensary facility except when such other facility is a federally licensed pharmacy. The distance between any two (2) medical marijuana dispensary facilities shall be measured by the methodology established by the methodology established by the Missouri Department of Health and Senior Services Division of Regulation and Licensure.
2. No person shall cause or permit the establishment of a medical marijuana dispensary facility where such facility is within one thousand (1,000) feet of a parcel of land which is used primarily for any of the following protected uses:
  - a. Churches, synagogues, mosques, temples, and other houses of worship, and related activities;
  - b. Primary or secondary schools; and
  - c. Day care facilities.

Such distances referred to above shall be measured by the methodology established by the Missouri Department of Health and Senior Services Division of Regulation and Licensure.

3. No person shall cause or permit the establishment of a medical marijuana dispensary facility where such facility is within one thousand (1,000) feet of an alcohol or drug abuse facility as defined by the State of Missouri Chapter 631, RSMo.

Such distances referred to above shall be measured by the methodology established by the Missouri Department of Health and Senior Services Division of Regulation and Licensure for medical marijuana-related entities and protected uses. For the purposes of this measurement, alcohol or drug abuse facilities shall be subject to the proximity criteria for churches, primary or secondary schools; and day care facilities.

4. No person shall cause or permit the establishment of an outdoor medical marijuana cultivation facility where such facility is within two hundred fifty (250) feet of a parcel of land which is used primarily for any of the following protected uses:
  - a. Churches, synagogues, mosques, temples, and other houses of worship, and related activities;
  - b. Primary or secondary schools; and
  - c. Day care facilities.

Such distances referred to above shall be measured by the methodology established by the Missouri Department of Health and Senior Services Division of Regulation and Licensure.

5. Medical Marijuana Dispensary Facilities shall provide parking spaces in an amount not below 15 per 1,000 square feet gross floor area plus one additional space for each employee on the maximum shift and one space for each vehicle utilized in the day-to-day operation of the business.
6. Nuisances. No medical marijuana-related entities, as defined in Section 405.060, shall emit an odor or in any way cause a public nuisance per Chapter 220 of this Code. Appropriate ventilation systems to prevent any odor of marijuana or fumes from leaving the premises or other changes to the facilities can be required if a public nuisance violation occurs.”

**SECTION 11.**

If any part of this Ordinance is found to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or effectiveness of the remaining provisions of this Ordinance or any part thereof and said Ordinance shall be read as if said invalid provision was struck therefrom and the context thereof changed accordingly with the remainder of the Ordinance to be and remain in full force and effect.

**SECTION 12.** All ordinances, resolutions or orders, or parts thereof, which conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.

**SECTION 13.** This ordinance shall be in full force and effect from and after its passage and approval.

*[Signatures on following page]*

READ TWO TIMES, PASSED AND APPROVED ON THIS \_\_\_\_\_ DAY OF JUNE 2019.

\_\_\_\_\_  
Presiding Officer of the Council

\_\_\_\_\_  
Mayor Ron Counts

ATTEST:

\_\_\_\_\_  
City Clerk Tammi Casey

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney Robert Sweeney





## CITY COUNCIL AGENDA ITEM STAFF REPORT

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<b>MEETING DATE:</b>	July 18, 2019
<b>TITLE:</b>	Marijuana Related Uses and Tobacco, Nicotine, and Other Legal Substance Establishments (Text Amendment)
<b>DEPARTMENT:</b>	Community Development
<b>PROJECT MANAGER:</b>	David B. Bookless, Community Development Director
<b>REQUESTED ACTION:</b>	Ordinance approval
<b>ATTACHMENTS:</b>	(1) Staff Report to Planning Commission; (2) Staff Memo to the Planning Commission (3) Draft Planning Commission Meeting Minutes (4) Draft Ordinance

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### **EXECUTIVE SUMMARY:**

A City-initiated request to amend Chapter 405, Zoning, of the Code of Ordinances to modify definitions and regulations related to marijuana related uses and tobacco, nicotine, and other legal substance establishments.

### **REVIEW & ANALYSIS:**

On November 6, 2018, Missouri voters approved Amendment 2, which legalized medical marijuana. On January 17, 2019, the City Council approved an ordinance establishing a six (6) month moratorium on the issuance of business licenses and/or occupancy permits for new medical marijuana dispensary facilities, medical marijuana cultivation facilities, medical marijuana-infused product manufacturing facilities, medical marijuana testing facilities, or other marijuana-related entities, electronic cigarette shops, and tobacco shops within the City of Arnold. The purpose of the moratorium was to allow the City of Arnold (i) adequate time to study the licensing and zoning issues related to medical marijuana dispensary facilities, medical marijuana cultivation facilities, medical marijuana-infused product manufacturing facilities, medical marijuana testing facilities, or other marijuana-related entities, electronic cigarette shops, and tobacco shops; (ii) adequate time to consider potential broad changes to Chapter 405 (Zoning Ordinance) and Chapter 605 (Business Regulations) that relate to medical marijuana dispensary facilities, medical marijuana cultivation facilities, medical marijuana-infused product manufacturing facilities, medical marijuana testing facilities, or other marijuana-related entities, electronic cigarette shops, and tobacco shops; and (iii) if such changes are necessary, to revise Chapter 405 (Zoning Ordinance) and Chapter 605 (Business Regulations) to incorporate such broad changes. On June 20, 2019, the City Council extended the moratorium an additional two months to ensure adequate time for the Planning Commission and Council to act.

Staff provided a draft ordinance to the Commission reflecting Amendment 2. The draft requires medical marijuana dispensaries be located in properties zoned "C-3" Commercial or "C-4" Planned Commercial, that minimum parking requirements be satisfied, and that the Planning Commission approves a Conditional Use Permit (CUP). All other medical marijuana related uses would be permitted by-right in



## CITY COUNCIL AGENDA ITEM STAFF REPORT

industrial zoning districts. The draft included language providing minimum distances between medical marijuana entities and a number of protected uses, as provided for in Amendment 2. Additionally, the draft included language including similar restrictions for tobacco, nicotine, and other legal substance establishments such as e-cigarette/vape establishments. After discussion, the Commission requested a number of modifications to the draft for further discussion.

After reviewing new rules issued by the Missouri Department of Health and Senior Services Division of Regulation and Licensure that defined the methodology by which the distance between medical marijuana entities and protected uses are to be measured, the Commission chose to revise the draft to reflect the default distance of **1,000 feet** in place (*see attached graphics illustrating how the methodology might impact protected uses in the City of Arnold.*). Additionally, the Commission recommended including language that requires **1,000 feet between medical marijuana dispensaries and drug abuse treatment facilities.**

An additional change the Commission made to the draft was to parking requirements by adding the requirement of **one additional space for each employee on the maximum shift and one space for each vehicle utilized in the day-to-day operation of the facility.**

Staff presented, and the Planning Commission reviewed, the proposed amendments at their May 28, 2019 meeting and the Commission offered comments. At the Commission's June 25, 2019 meeting, Staff presented revisions to the proposed amendment.

### **RECOMMENDATION:**

At their June 25, 2019 meeting, the Planning Commission, by a vote of 9 to 0, voted to recommend approval of the proposed text amendments to the Zoning Ordinance contained in the attached draft.



# MEMORANDUM

**Date:** June 4, 2019  
**To:** Planning Commission  
**From:** David B. Bookless, AICP *DBB*  
**Subject:** 2019-14: Medical Marijuana

At the May 28, 2019 meeting of the Planning Commission, project 2019-14, an amendment to Municipal Code Chapter 405 (Zoning) – Medical marijuana, was discussed. Specifically, the Commission requested Staff prepare potential revisions to the draft addressing proximity measurement methodology, parking, and proximity to liquor stores. Additionally, the Commission requested additional proximity maps be prepared.

- The Commission's desire to see a different methodology utilized in measuring the distance between dispensaries and protected uses has been mooted by Missouri Department of Health and Senior Services Division of Regulation and Licensure rules that were issued subsequent to the writing of the Staff report provided at the previous Commission meeting.

A key difference is that while Staff and the Commission were thinking measurements would be "as the crow flies," the State mandates that *"Measurements shall be made along the shortest path between the demarcation points that can be lawfully traveled by foot."* i.e. Measurements are to follow sidewalks, crosswalks, etc.; and not across creeks, over fences, or along "goat paths."

Additionally, how the location of the "demarcation points" are determined varies based on both the type of structure in which the dispensary is located and the type of structure in which the "protected use" is located, and is summarized as follows:

- If both the protected use and the dispensary are located in freestanding buildings, then measurement is from the closest point on the external wall of the dispensary structure to the closest point on the property line of the protected use.
- If the protected use is within a larger structure, such as an office building or strip mall, and the dispensary is located in a freestanding building, then measurement is from the closest point on the external wall of the dispensary structure to the closest entry or exit of the protected use.
- If the protected use is located in a freestanding building and the dispensary is located within a larger structure, such as an office building or strip mall, then measurement is from the property line of the protected use to the closest entry or exit of the dispensary.
- If both the protected use and the dispensary are within a larger structure, such as an office building or strip mall, then measurement is from the closest entry or exit of the protected use to the closest entry or exit of the dispensary.

Given the State-mandated measurement criteria, the proposed addition of residences and parks to the list of protected uses is no longer warranted, as access to these particular uses generally far exceed the 1,000 ft. distance.

The State-mandated measurement criteria also makes it difficult to map potential dispensary locations when considering the multitude of potential combinations of existing structures containing protected uses and existing structures located within the "C-3" and "C-4" districts. It is even more difficult to map potential dispensary locations when considering undeveloped properties where no structure, whether freestanding or a larger structure, such as an office building or strip mall has been proposed.

What is certain is that based on the maximum distance allowed by the State, most "C-3" and "C-4" properties in the City of Arnold *could* have a dispensary located on them. However, as is discussed previously and re-emphasized further down in this memorandum, proposed parking requirements may reduce the number of potential locations, and by requiring a Conditional Use Permit, the City is afforded an opportunity to apply additional scrutiny to a particular location where a dispensary might be proposed.

For the Commissions information, attached to this memorandum is a map identifying existing "C-3" and "C-4" districts as well as existing "protected uses." Additionally, there is a series of "zoomed-in" maps depicting particular areas in the City, as identified by the Commission for additional examination.

- Revision (in yellow) to draft ordinance language for parking requirements to reflect the Commission's discussion may read as follows:

*Medical Marijuana Dispensary Facilities shall provide parking spaces in an amount not below 15 per 1,000 square feet gross floor area plus one additional space for each employee on the maximum shift and one space for each vehicle utilized in the day-to-day operation of the facility.*

- The Commission requested additional draft language limiting dispensary locations relative liquor stores. After discussing the request with the City Attorney, it is Staff's belief that the addition of this criteria might be problematic, as it is not clear that the two legal uses conflict with each other. However, draft revised language reflecting the request is provided below for your consideration.

*No medical marijuana dispensary facility may be located within one thousand (1,000) feet of an establishment primarily engaged in retailing packaged alcoholic beverages, such as ale, beer, wine, and liquor. The distance between such establishments shall be measured in a straight line, without regard to intervening structures or properties, from the main public entrance of any structure containing a medical marijuana dispensary facility to the main public entrance of any structure containing an establishment primarily engaged in retailing packaged alcoholic beverages, such as ale, beer, wine, and liquor.*

- However, Staff is presenting an additional limitation that appears to have a more direct linkage with respect to the proximity to drug abuse treatment facilities. Please see proposed language reflecting this below in yellow.

*No medical marijuana dispensary facility may be located within one thousand (1,000) feet of an alcohol or drug abuse facility as defined by the State of Missouri Chapter 631, RSMo. The distance between such establishments shall be measured by the same methodology as utilized in the measurement of distance between medical marijuana dispensaries and churches, synagogues, mosques, temples, and other houses of worship, and related activities, primary or secondary schools, and day care facilities.*

- Please consider that in addition to proximity requirements being satisfied, the following additional criteria that must be satisfied before a dispensary could locate on a particular property:
  - The property must be zoned "C-3" Commercial or "C-4" Planned Commercial.
  - Minimum parking requirements must be satisfied.
  - The Planning Commission has approved a Conditional Use Permit (CUP).

Conditional uses warrant an additional level of scrutiny by the Commission. When considering an application for a CUP, the Planning Commission must determine that application satisfied the following criteria:

1. Consistent with good planning practice;
2. Can be operated in a manner that is not detrimental to the permitted developments and uses in the district;
3. Can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area;
4. Deemed essential or desirable to preserve and promote the public health, safety, and general welfare of the City of Arnold.

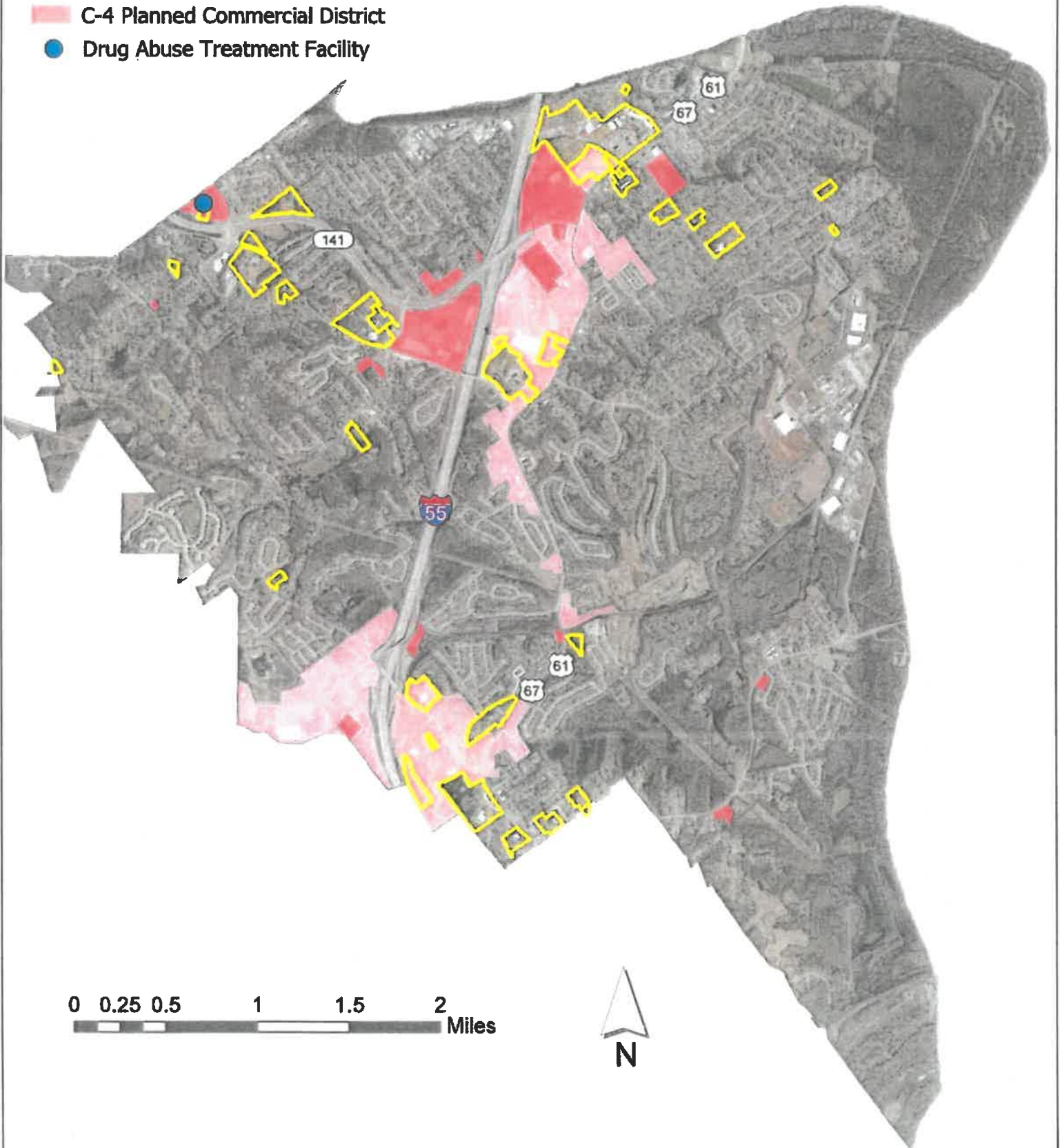
Note: In approving a CUP, the Planning Commission has the authority to impose such conditions as it determines necessary to satisfy the above criteria.

**Please be advised that while the possible revised draft ordinance language and the accompanying discussion above is provided for your consideration, the City Attorney may provide guidance to the Commission before any such changes to the draft are made.**

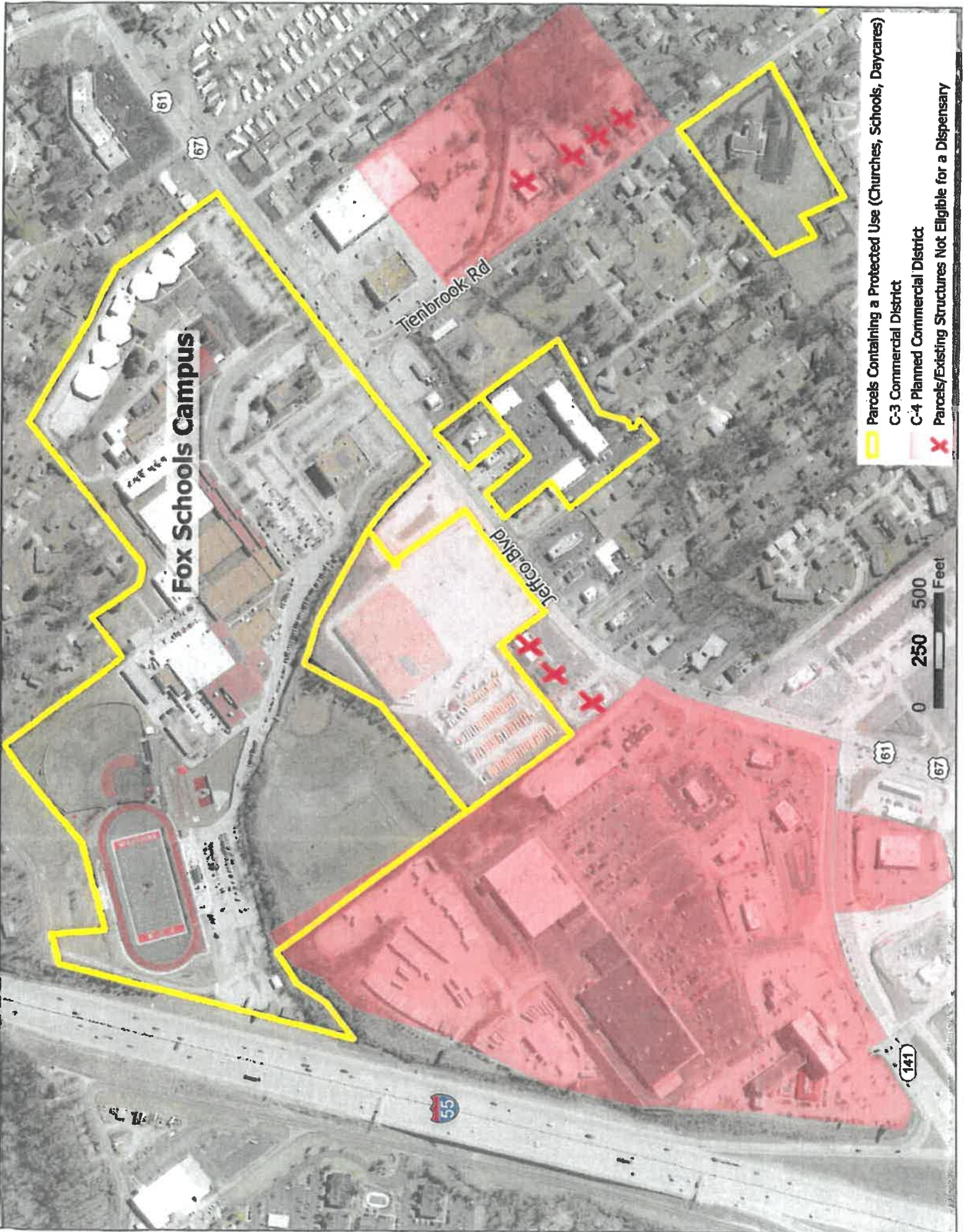


# Proximity-Sensitive Use Parcels and Locations

- Parcels Containing a Protected Use (Churches, Schools, Daycares)
- C-3 Commercial District
- C-4 Planned Commercial District
- Drug Abuse Treatment Facility







**Fox Schools Campus**

Tenbrook Rd

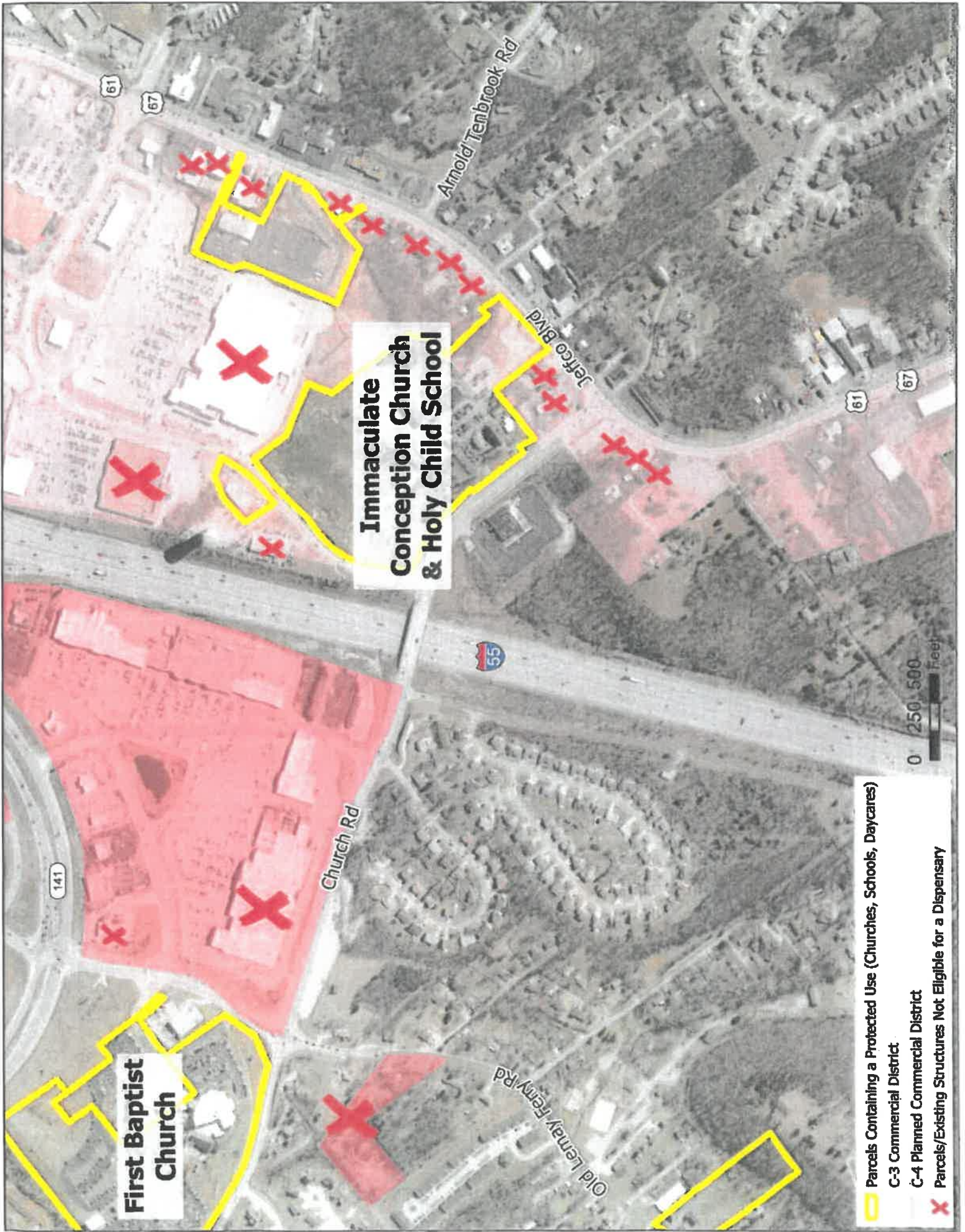
Jafco Blvd

141

-  Parcels Containing a Protected Use (Churches, Schools, Daycares)
-  C-3 Commercial District
-  C-4 Planned Commercial District
-  Parcels/Existing Structures Not Eligible for a Dispensary





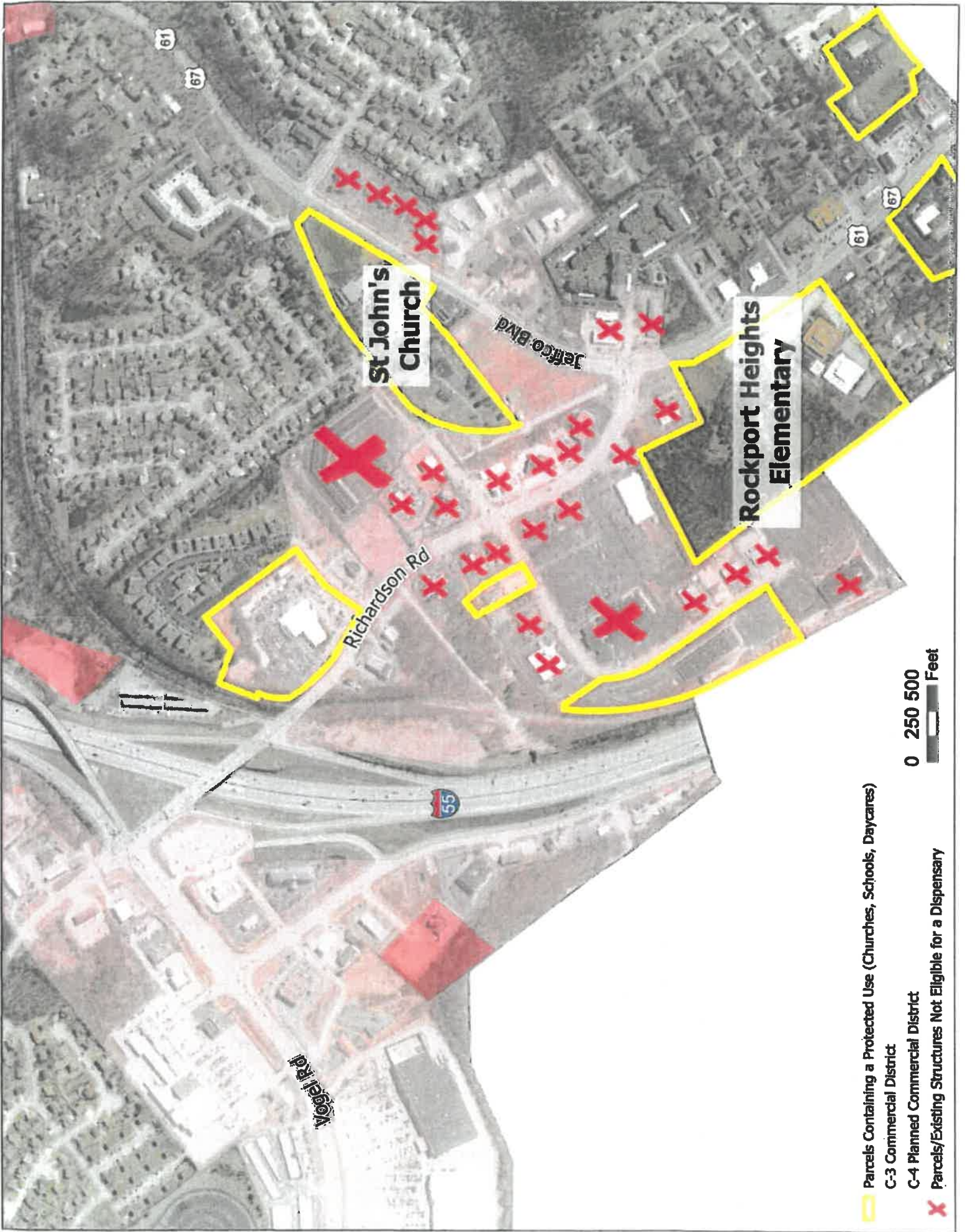


**First Baptist Church**

**Immaculate Conception Church & Holy Child School**

-  Parcels Containing a Protected Use (Churches, Schools, Daycares)
-  C-3 Commercial District
-  C-4 Planned Commercial District
-  Parcels/Existing Structures Not Eligible for a Dispensary





St John's Church

Rockport Heights Elementary

Richardson Rd

Jeffco Blvd

61

67

61

67

55

Hogel Rd

- Parcels Containing a Protected Use (Churches, Schools, Daycares)
- C-3 Commercial District
- C-4 Planned Commercial District
- Parcels/Existing Structures Not Eligible for a Dispensary





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## REPORT TO PLANNING COMMISSION

### CITY OF ARNOLD

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**APPLICATION #:** 2019-14

**APPLICATION NAME:** Chapter 405 (Zoning) - Medical Marijuana-Related Entities, Electronic Cigarette Shops, and Tobacco Shops.

**APPLICANT:** City of Arnold

**REQUEST:** A City-initiated request to amend Chapter 405, Zoning, of the Code of Ordinances establishing definitions and regulations related to medical marijuana-related entities, as defined by the State of Missouri, electronic cigarette shops, and tobacco shops.

**MEETING DATE:** May 28, 2019

**REPORT DATE:** May 28, 2019

**CASE MANAGER:** David B. Bookless, AICP

**RECOMMENDATION:** **APPROVAL**





## REPORT TO PLANNING COMMISSION

### CITY OF ARNOLD

#### BACKGROUND

On November 6, 2018, Missouri voters approved Amendment 2, which legalized medical marijuana. The amendment requires the state Department of Health and Senior Services to begin accepting applications for qualifying patients within 180 days after December 6, 2018 (therefore, no later than June 4, 2019), to begin accepting applications for dispensaries no later than 240 days after December 6, 2018 (therefore, no later than August 3, 2019), and to accept or reject applications for dispensaries within 150 days of receiving them. Although Amendment 2 speaks primarily to state requirements and allowances, it includes language relative to the ability of local governments to regulate the location of such facilities, and identifies a maximum proximity distance from a number of protected uses (i.e. 1,000 feet max). It should be noted that the amendment identifies the minimum number of licenses for such entities that must be granted, and although there is a reasonable expectation that the minimum number will be what is granted upon implementation, it is also reasonable to assume that the number will increase in the future. Therefore, it is imperative that the City consider the long-term implications and unintended consequences of the regulations it puts into place for such uses.

On January 17, 2019, the City Council approved an ordinance establishing a six (6) month moratorium on the issuance of business licenses and/or occupancy permits for new medical marijuana dispensary facilities, medical marijuana cultivation facilities, medical marijuana-infused product manufacturing facilities, medical marijuana testing facilities, or other marijuana-related entities, electronic cigarette shops, and tobacco shops within the City of Arnold. The purpose of the moratorium was to allow the City of Arnold (i) adequate time to study the licensing and zoning issues related to medical marijuana dispensary facilities, medical marijuana cultivation facilities, medical marijuana-infused product manufacturing facilities, medical marijuana testing facilities, or other marijuana-related entities, electronic cigarette shops, and tobacco shops; (ii) adequate time to consider potential broad changes to Chapter 405 (Zoning Ordinance) and Chapter 605 (Business Regulations) that relate to medical marijuana dispensary facilities, medical marijuana cultivation facilities, medical marijuana-infused product manufacturing facilities, medical marijuana testing facilities, or other marijuana-related entities, electronic cigarette shops, and tobacco shops; and (iii) if such changes are necessary, to revise Chapter 405 (Zoning Ordinance) and Chapter 605 (Business Regulations) to incorporate such broad changes.

The moratorium included not only medical marijuana-related entities, but a number of other uses that the Council considered worthy of similar consideration due to potential adverse impacts on the general welfare of the community at-large, and children in particular. Specifically, electronic cigarette shops and tobacco shops were included in the moratorium for consideration of applicable zoning ordinance changes.

Since the approval of the moratorium, Staff has researched the amendment and the issues involved, met with representatives of proposed medical marijuana-related entities and



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# REPORT TO PLANNING COMMISSION

## CITY OF ARNOLD

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medical marijuana industry experts. This proposed draft addresses zoning issues only. Any additional regulations relative to business licensing, etc. will be addressed separately.

### **DISCUSSION/ANALYSIS**

The analysis by Staff that follows is intended to allow the Planning Commission and City Council to reach the most informed decision possible and to facilitate discussion. Such discussion is important to identify and consider any potential unintended consequences of the proposed amendment.

### **CURRENT ZONING REGULATIONS**

Chapter 405, Zoning, does not speak directly to any of the uses under consideration. However, dispensaries, electronic cigarette shops, and tobacco shops could be interpreted to fall within the broad “stores, shops, service facilities,” etc. category, thereby permitting such uses by-right in all commercial districts. All cultivation, manufacturing, testing, etc. facilities could fit broadly in all manufacturing districts by right. Outdoor cultivation could be allowed in a variety of districts.

### **AMENDMENT 2 - ZONING REGULATION GUIDANCE**

The approved amendment identifies several uses from which maximum proximity distances are provided. Specifically, such medical marijuana-related entities must be sited at least 1,000 feet from churches, primary and secondary schools, and day care facilities. The state also provides a maximum distance provision between such entities of 1,000 feet. However, local governments may reduce the distances as they see fit. Local governments may also enact additional regulations, provided such regulations are not in conflict with the amendment and not unduly burdensome.

### **IMPLICATIONS OF MAKING NO CHANGES TO THE CURRENT ZONING REGULATIONS**

By allowing the uses to fall within established land use categories with no *proximity to protected use limits*, the City would be at risk to have medical marijuana dispensary facilities, medical marijuana cultivation facilities, medical marijuana-infused product manufacturing facilities, medical marijuana testing facilities, other marijuana-related entities, electronic cigarette shops, and tobacco shops proliferate across the City’s commercial and industrial areas with no regard to the unintended adverse impacts on neighboring uses.

However, Council has indicated that it supports restricting such uses in order to minimize the adverse impact on the general welfare of the community at large.

### **POTENTIAL CHANGES TO THE ZONING ORDINANCE**

After researching the uses and their impacts, Staff suggests approaching retail dispensaries, electronic cigarette shops, and tobacco shops differently from the remaining medical-



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## REPORT TO PLANNING COMMISSION

### CITY OF ARNOLD

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marijuana-related entities, as dispensaries and shops are generally open to the public and may impact neighborhoods differently than the other uses, which are akin to (light) industrial uses that are not open to the public.

Due in part to the limited number of licenses being issued by the State of Missouri, dispensaries will likely attract patrons from within and from outside Arnold. There is the potential for loitering, attracting undesirable elements, petty crime, etc. not only at the establishment's location, but in the surrounding neighborhood. Therefore, to afford some protection to the community at large, Staff recommends that the Planning Commission consider adding residential districts and public parks to the "protected uses" from which medical marijuana dispensaries must maintain separation. However, Staff also recommends *reducing* the distance requirement that dispensaries must maintain from the expanded list of protected uses from 1,000 feet to 250 feet. This figure was reached after conducting a map analysis of a variety of distances between zero and 1,000 feet, and finding 250 feet afforded buffering that was not substantially less than at greater distances. However, Staff recommends maintaining the State's 1,000 foot separation between dispensaries as a way to prevent an undesirable clustering of such uses that might alter the character of the neighborhood or corridor.

Additionally, as dispensaries are expected to serve the broader regional marketplace, Staff recommends permitting dispensaries only in the "C-3" and "C-4" Commercial Zoning Districts by Conditional Use Permit (CUP). Staff's reasoning for directing dispensaries to "C-3" and "C-4" districts is that these two commercial districts are generally utilized for regional shopping facilities as opposed to centers that primarily serve local or neighborhood customers. The CUP provides the City with a persuasive way for ensuring such uses operate in a way that does not substantially affect the neighborhood in an adverse way. The granting of a CUP may include conditions of approval to minimize adverse impacts; and should the entity operate contrary to what was presented to the Commission or so as to adversely impact the neighborhood, the City may act to suspend or revoke the CUP.

Electronic cigarette shops/tobacco shops are fairly commonplace throughout the region, and local establishments likely attract the bulk of their customers from within the Arnold area. Due to the known adverse health effects of the products sold at these shops, and the shared concern about minors accessing such products, Staff recommends such uses be located no closer than 250 feet to primary and secondary schools, residential districts, and public parks. Staff recommends establishing a 1,000 foot separation between electronic cigarette shops/tobacco shops as a way to prevent an undesirable clustering of such uses that might alter the character of the neighborhood or corridor.

Additionally, Staff recommends permitting electronic cigarette shops/tobacco shops in all "C" commercial districts in order to serve local customers as well as regional customers, but also requiring a Conditional Use Permit (CUP). The reasoning for requiring a CUP is that it provides the City with a persuasive way for ensuring such uses operate in a way that does not

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substantially affect the neighborhood in an adverse way. The granting of a CUP may include conditions of approval to minimize adverse impacts; and should the entity operate contrary to what was presented to the Commission or so as to adversely impact the neighborhood, the City may act to suspend or revoke the CUP.

For most of the *non-retail* medical marijuana-related entities, Staff recommends restricting their location to “M” manufacturing districts as a “by-right” use with no proximity limitations. Staff’s reasoning is that these uses are not substantially different from other industrial uses that occur wholly within an enclosed structure with no public access. The City allows a wide variety of manufacturing uses by right, provided such uses don’t include the manufacturing of explosives and flammable gases and liquids. In such cases, those uses require a CUP.

The only non-retail use that Staff recommends including a proximity requirement for is outdoor cultivation facilities. In this case, the use may impact neighbors more than the other manufacturing uses primarily because it may be perceptible from adjacent properties. Therefore, a 250 foot separation from all protected uses is recommended in this case.

Regardless of which zoning district the uses are located in, Staff recommends several additional minimum performance standards for medical marijuana-related entities. Staff recommends that language be included that states that such establishments shall not cause a public nuisance, that appropriate ventilation systems are installed to prevent any odor of marijuana or fumes from leaving the premises, and that the City may require other changes to such facilities if a public nuisance violation occurs.

Additionally, for dispensaries in particular, there is evidence to suggest parking requirements generally associated with retail uses is inadequate. Data collected for medical/recreational dispensaries in Colorado (TripGeneration.org), when compared with that for that for pharmacies and other small size retail operations [Institute of Transportation Engineers’ (ITE) Trip Generation Manual, 9th Edition], suggests that dispensaries generate about 10 times more traffic than a typical retail store and 5 times more than a pharmacy. While this data is for dispensaries offering both medical and recreational marijuana sales, it is anticipated by those in the industry that recreational marijuana sales will be permitted in the next few years. With that in mind, and that parking standards are not something that can be retroactively required, Staff recommends establishing a standard that recognizes this eventuality.

Current parking requirements for retail uses is generally between 3.3 and 5.5 spaces per 1,000 square feet of gross floor area. Staff does not recommend increasing that by 5 to 10 times thereby requiring upwards of 28-55 spaces per 1,000 sq. ft., but to a reasonable figure of 15 spaces per 1,000 square feet gross floor area.

None of the minimum standards recommended by Staff would supplant the Commissions right to impose additional conditions as part of a CUP approval.



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#### FINDINGS AND RECOMMENDATION

#### **SUCH AMENDMENT IS REQUIRED BY PUBLIC NECESSITY AND CONVENIENCE AND GENERAL WELFARE**

The Community Development Director finds that the text amendments contained within application number 2019-14 are warranted by the public necessity and convenience to provide clarification in the enforcement of the Zoning Ordinance.

The Community Development Director finds that the text amendments contained within application number 2019-14 are warranted by the need to promote and protect the general welfare by protecting the economic and tax base of the City, preserving and enhancing the values of property owners and users, promoting the orderly and harmonious development and redevelopment of the City, preserving and promoting the character and stability of the City and its various residential and commercial neighborhoods, improving the appearance of the City, and promoting the best use and development of commercial land in accordance with the Comprehensive Plan.

#### **RECOMMENDATION**

The Director of Community Development finds that the proposed text amendments meet or exceed review criteria and further advances the intent of Chapter 405. Based on this finding the Director of Community Development requests favorable consideration of the draft amendments.

A handwritten signature in black ink that reads "David B. Bookless".

David B. Bookless, AICP  
Community Development Director





# ATTACHMENTS

- 1) Pictures of medical marijuana-related entities, electronic cigarette/tobacco shops, etc.**
- 2) Sample news stories related to e-cigarettes, vaping, etc.**
- 3) Amendment 2 as approved by Missouri Voters**
- 4) Draft Ordinance**
- 5) Map identifying parcels currently meeting Medical Marijuana Dispensaries proximity requirements as proposed**

# Indoor Cultivation/Manufacturing Facilities

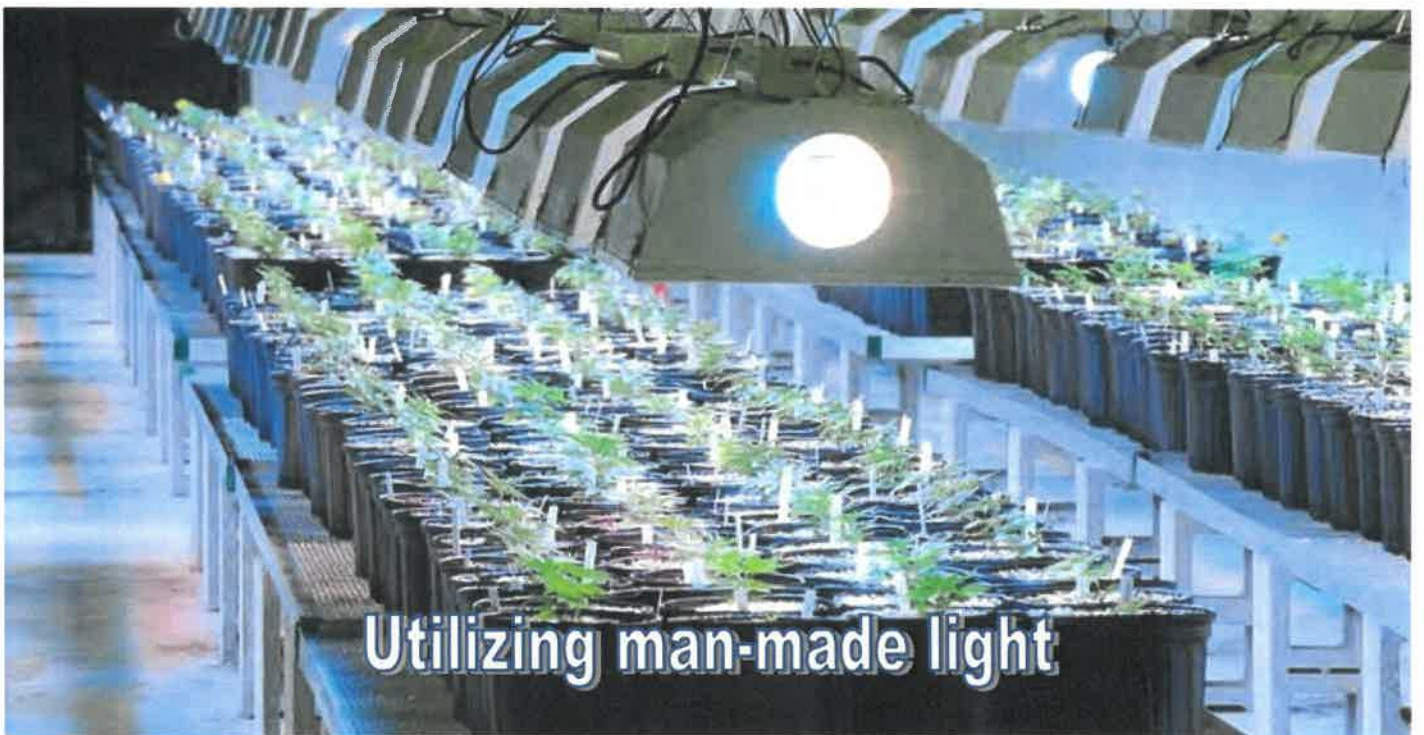




# Indoor Cultivation Facilities



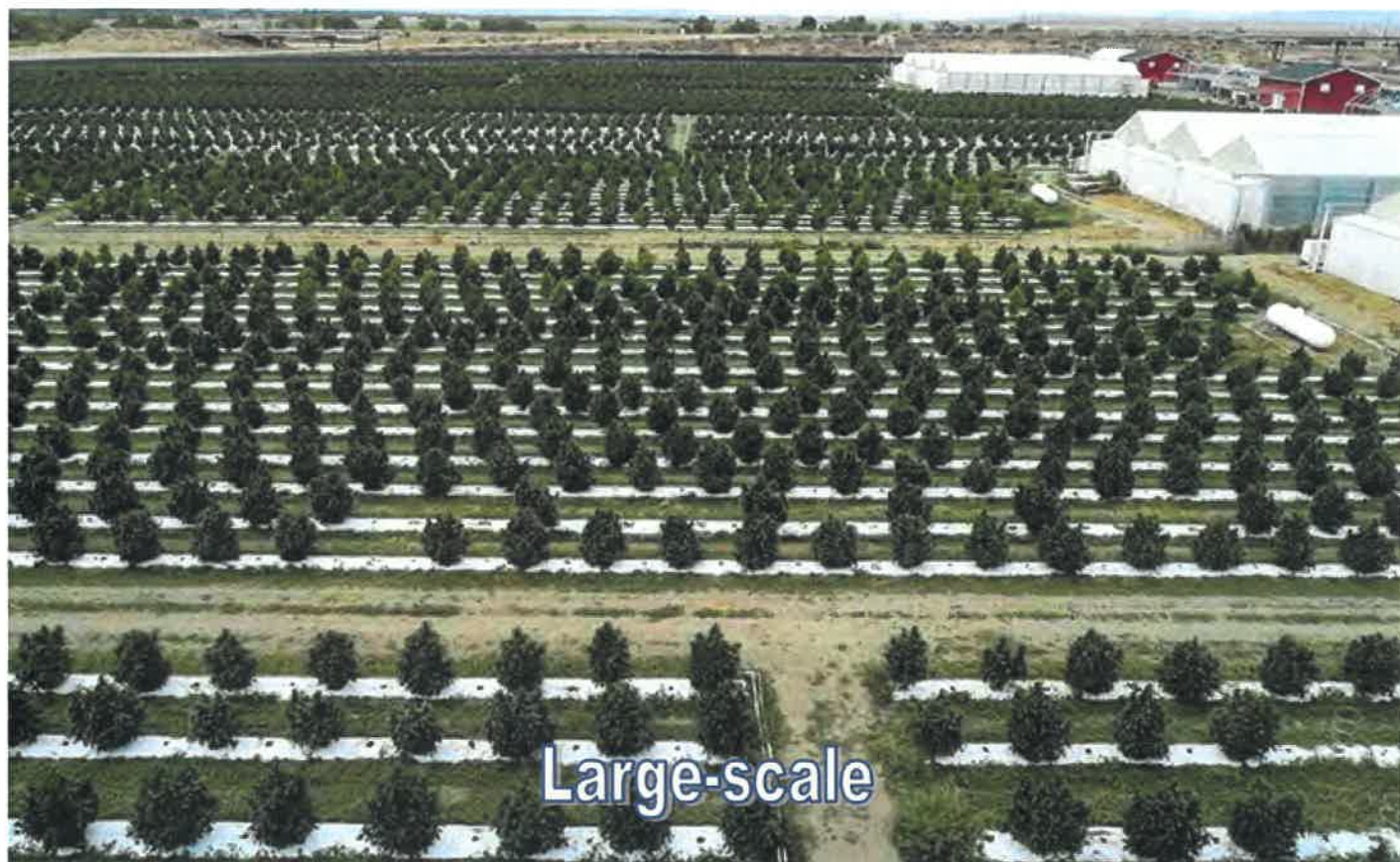
Utilizing natural light



Utilizing man-made light



# Outdoor Cultivation Facilities



Large-scale



Small-scale



# Manufacturing Facilities



# Manufacturing Facilities





# Dispenseries





# Dispenseries





# Dispenseries



# eCigarette/Tobacco Shops

## Parents beware: Here are 5 types of e-cigarettes your teen might be hiding

Emma Kate Fittes, Indianapolis Star | Published 2:17 p.m. ET May 2, 2019 | Updated 3:25 p.m. ET May 2, 2019

## FDA plans crackdown on e-cigarettes as popularity soars among teens

By Blythe Bernhard St. Louis Post-Dispatch | Nov 9, 2018

## Teens are vaping nicotine and they don't even realize it, study says

Brett Molina, USA TODAY | Published 12:02 p.m. ET April 23, 2019 | Updated 12:16 p.m. ET April 23, 2019



Twice as many high school students used nicotine-tipped electronic cigarettes this year compared with last year, an unprecedented jump in a large annual survey of teen smoking, drinking and drug use (Dec. 17) AP

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