



# Memo No. 1

TO: City Council

DATE: November 18, 2021

FROM: Cassie Tripard, Spencer Starke, Madson Matthias, CPDI, Development Services

RE: **Title 20 Amendment – Change to Cannabis Product Manufacturing Classification**

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The proposed amendments to the City of Missoula, Title 20 Municipal Code, Zoning Ordinance, included in the staff report had identified cannabis manufacturing as a general manufacturing use. General manufacturing uses are only permitted in the M1 Limited Industrial and M2 Heavy Industrial zoning districts.

After speaking with members of the cannabis industry, staff were made aware that uses with similar impacts and hazards as that of cannabis product manufacturing, such as microbrewery and distillery are more leniently zoned than general manufacturing. Staff reached out to the City Fire Department and reviewed International Fire Code to investigate how potential hazards associated with cannabis product manufacturing are mitigated. Staff also researched the different methods used in cannabis product manufacturing.

Cannabis product manufacturing is a broad category that includes everything from baking brownies using cannabis butter to extracting concentrates (THC, flavonoids, terpenes etc.) using flammable solvents. The recommendations included in the staff report, were based on staff concerns with the processes involved in extraction which is one of the more intensive forms of cannabis product manufacturing. Conversations with the Fire Department confirmed that the majority of health and safety impacts involved in cannabis extraction can be delineated based upon the method of extraction. The machinery used to extract concentrates varies. While some machinery may use flammable solvents, some extraction machinery does not use flammable solvents and often uses CO2 instead. Similar to many cannabis product manufacturing operations, microbreweries and distilleries also use CO2 and heat in the production of alcohol. Microbreweries and distilleries are permitted by right in the C Commercial and M Industrial zoning districts. The City Fire Department stated that they review each business to determine which processes and machinery are used to extract concentrates. The City Fire Department determined that cannabis product manufacturing processes which do not use flammable solvents do not pose the same risk to public health and safety as processes that do use flammable solvents. Review of potentially hazardous manufacturing processes has already been implemented at the City by the Fire Department through the building permit and business license review process.

Based on this research, staff recommends amending the ordinance proposal to classify cannabis product manufacturing based upon whether the system utilizes flammable solvents or not. Cannabis extraction that does not utilize flammable solvents would be classified as a limited manufacturing use. Limited manufacturing uses are permitted by right in the C Commercial and M Industrial zoning districts and conditionally in the B3 Business Mixed-Use district. Classifying cannabis product manufacturing as a limited manufacturing use better aligns with existing use classifications and permitted zoning districts.

The proposed ordinance would be amended to include the manufacturing of cannabis products that do not utilize flammable solvents in the Limited Industrial Used Group description ( Title 20.105.050.D.2.) , as shown below. Changes described in this memo are highlighted below.

## **20.105.050 – Industrial Use Group**

### **D. Manufacturing, Production and Industrial Services**

#### **1. Artisan**

On-site production of goods by hand manufacturing, involving the use of hand tools and small-scale, light mechanical equipment in a completely enclosed building with no outdoor operations or storage, and occupying no more than 3,500 square feet of gross floor area. Typical uses include woodworking and cabinet shops, cannabis cultivation (With a canopy area up to Tier 1, MCA § 50-46-305), ceramic studios, jewelry manufacturing, food manufacturing, and similar types of arts and crafts or very small-scale manufacturing uses that have no negative external impacts on surrounding properties.

#### **2. Limited**

Manufacturing of finished parts or products, primarily from previously prepared materials. Typical uses include: catering establishments, printing and related support activities; machinery manufacturing; food manufacturing; computer and electronic product manufacturing/assembly; electrical equipment, appliance, component manufacturing/assembly; furniture and related product manufacturing/assembly; manufacturing of cannabis products that do not utilize flammable solvents and other manufacturing and production establishments that typically have very few, if any, negative external impacts on surrounding properties. Also includes cannabis cultivation (With a canopy area up to Tier 2, MCA § 50-46-305) and "artisan manufacturing/production" type uses that do not comply with the enclosed building, floor area and/or outside operations/storage criteria that apply to artisan manufacturing/production uses.

Commentary: Businesses with approved State Cannabis licenses will be allowed to split grow areas between multiple locations as long as the combined canopy area square footage of all locations does not exceed the maximum canopy area permitted in the applicable state licensing tier. Locally, the canopy square footage can be distributed on the ground to any number of parcels so long as the canopy area on a single parcel does not exceed the square footage maximum allowed by the zoning district, and does not exceed the State license requirements.

#### **3. General**

- a. Manufacturing of finished or unfinished products, primarily from extracted or raw materials, or recycled or secondary materials, or bulk storage and handling of such products and materials. Typical uses include: textile mills; textile product mills; apparel manufacturing; leather and allied product manufacturing; wood product manufacturing; paper manufacturing; chemical manufacturing; plastics and rubber products manufacturing; nonmetallic mineral product manufacturing; transportation equipment manufacturing; primary metal manufacturing; ~~and~~ fabricated metal product manufacturing; and manufacturing of cannabis products. Also includes cannabis cultivation, medical, scientific or technology-related research

establishments that produce odors, dust, noise, vibration or other external impacts that are detectable beyond the property lines of the subject property.

### **Review Criteria**

Title 20, Section 20.85.040.G states “In reviewing and making decisions on zoning amendments, the Zoning Officer, Planning Board, and City Council must consider” a set of criteria. The following is a review of the proposed regulations relative to the criteria listed in Section 20.85.040.G.

#### **1. Whether the proposed zoning amendment is consistent with MCA § 76-2-304:**

MCA 76-2-304(2) requires that governing bodies, in adopting zoning regulations, must be made in accordance with a growth policy and be designed to secure safety from fire and other danger, promote public health, safety, and general welfare and facilitate the adequate provision of transportation, water, sewerage, and schools, parks and other public requirements. In addition, the governing body shall consider the reasonable provision of adequate light and air; the effect on motorized and non-motorized transportation systems; the promotion of compatible urban growth, the character of the district and its peculiar suitability for particular uses, and conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The 2035 Our Missoula City Growth Policy is the guiding regional plan for the City of Missoula. An economic health implementation item of the Growth Policy states the City shall “identify appropriate locations for industrial uses and actively recruit manufacturing businesses”. This implementation item suggests that the City should promote manufacturing businesses as a form of economic development. The Economic Health section of the Growth Policy promotes a diverse mix of uses by stating the City shall “support strategic economic development efforts that broaden, expand, and/or diversify the base economy”. The ordinance language in the staff report overly restricted cannabis manufacturing businesses based on perceived health and safety risks that are not present in all types of cannabis manufacturing. Since additional research has shown that much of cannabis product manufacturing can be done safely and will be reviewed by the Fire Department, staff recommends that allowing safer forms of manufacturing in a wider range of zoning district better aligns with the Growth Policy recommendations to expand the base economy and recruit manufacturing businesses.

The City Fire Department reviews cannabis manufacturing businesses to ensure they are safe from fire and other dangers. Cannabis product manufacturing businesses which use flammable solvents pose a greater hazard. For this reason, staff recommend classifying manufacturing which uses flammable solvents as a general manufacturing use. General manufacturing is only permitted in the M1 Limited Industrial and M2 Heavy Industrial zoning districts which do not allow residential uses. The City Fire Department confirmed that cannabis product manufacturing business which do not use flammable solvents are safe from fire and other dangers and may be more leniently zoned. Staff recommend classifying cannabis product manufacturing that does not use flammable solvents as a limited manufacturing use which is permitted by right in the C Commercial and M Industrial zoning districts and conditionally in the B3 Business Mixed-Use district. This designation promotes and protects public health, public safety, and the general welfare.

The proposed classification considers promotion of compatible urban growth and the character of the district and its peculiar suitability for particular uses. Classifying cannabis product manufacturing which does not use flammable solvents as limited manufacturing permits this use in zoning districts which allow similar uses. Similar uses include microbrewery, microdistillery, and other uses listed under limited manufacturing. The limited manufacturing use classification states that it includes “manufacturing and production establishments that typically have very few, if any, negative external impacts on surrounding properties”. Staff research showed that cannabis product manufacturing processes which do not use flammable solvents have few negative external impacts on surrounding properties. Cannabis product manufacturing which does not use flammable solvents does not pose hazards to the building. Any potential hazards will be identified during the Fire Department’s review and mitigated through the requirements of the Fire Code. The proposed classification conserves the value of buildings and encourages the most appropriate use of the land throughout the jurisdictional area.

2. Whether the proposed zoning amendment corrects an error or inconsistency in the zoning ordinance or meets the challenge of a changing condition;

Staff recommends classifying cannabis product manufacturing which does not use flammable solvents as limited manufacturing in order to correct an inconsistency. The recommendation included in the staff report was inconsistent with similar uses in the zoning ordinance.

3. Whether the proposed zoning amendment is in the best interests of the city as a whole.

The recommendation described in this memo is in the best interest of the city as a whole because it protects public health and safety while allowing opportunities for additional economic development.

**Recommended Motion:**

City Council adopt an ordinance generally amending Title 20, Missoula Municipal Code, the City Zoning Ordinance, to incorporate revisions in the following chapters: 20.10 Business and Commercial Districts, 20.15 Industrial and Manufacturing Districts, 20.45 Accessory Uses and Structures, 20.100 Terminology, and 20.105 Use Classifications, and creation of 20.40.083 in Use and Building Specific Standards, to incorporate regulations concerning legislative changes in the cannabis industry, as amended by Memo #1.