

Sponsor: Mayor Denison
First Reading: September 9, 2024
Second Read: October 7, 2024

ORDINANCE #73-24

AN ORDINANCE AMENDING THE LAND USE AND DEVELOPMENT CODE OF THE TOWN OF WYOMING TO AUTHORIZE THE USE OF LAND IN CERTAIN ZONING DISTRICTS FOR MARIJUANA-BASED BUSINESSES PURSUANT TO CONDITIONAL USE APPROVAL

WHEREAS, the Town of Wyoming is authorized pursuant to 22 *Del. C.* Chapter 3 and Section 18.20 and Chapter 33 of the Town Charter to enact zoning and land development regulations in the Town of Wyoming;

WHEREAS, the Town of Wyoming enacted zoning and land development regulations by adopting the revised and updated Land Use and Development Code of the Town of Wyoming on March 6, 2023;

WHEREAS, the Town of Wyoming is authorized pursuant to section 15-6 of its Land Use and Development Code to amend the text of the Land Use and Development Code after the amendment has been reviewed by the Planning and Zoning Committee and the Town Council has held a public hearing that was advertised in a newspaper of general circulation in the town at least 15 days prior to the hearing;

WHEREAS, pursuant to § 4917A of Title 16 of the Delaware Medical Marijuana Act, local governments may enact "ordinances or regulations not in conflict with [The Act] or with Department regulations regulating the time, place, and manner of registered compassion center operations and registered safety compliance facilities";

WHEREAS, pursuant to § 1351(a) of Title 4 of the Delaware Marijuana Control Act, "[A] municipality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance";

WHEREAS, pursuant to § 1351(b) of Title 4 of the Delaware Marijuana Control Act, municipalities may also adopt regulations "governing the time, place manner, and number of marijuana establishment operations";

WHEREAS, in the opinion of the Town Council, it is necessary to amend the Land Use and Development Code to permit the operation of marijuana-based businesses in certain districts, subject to conditional use approval;

WHEREAS, the Planning and Zoning Committee reviewed the proposed text amendment at its meeting held May 29, 2024, and recommended approval to the Town Council;

WHEREAS, a public hearing on the proposed text amendment was held before the Town Council on September 9, 2024, notice of which was published on August 9, 2024 in the Delaware State News (newspaper), being at least 15 days before the public hearing; and

WHEREAS, all members of the public were given an opportunity to comment on the proposed amendment to the Land Use and Development Code at the public hearing, and after

hearing comments from the public and considering the proposed amendment to the text of the Land Use and Development Code, the Town Council believes it is in the best interest of the public health, safety, and welfare to adopt the changes more particularly detailed in this ordinance.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Wyoming, a majority thereof concurring in council duly met, that the Land Use and Development Code of the Town of Wyoming is hereby amended as follows:

Section 1. Amend Section 4-1 (Permitted Uses and Structures) by making insertions as shown by underline and deletions as shown by strike through as follows:

Permitted Uses and Structures	D	OS	R-1	R-2	TC	C	I-1
Blank Not Permitted	e	Zone	Zone	Zone	Zone	Zone	Zone
P Permitted use	f						
DP Development-Plan Approval required	i						
CU Conditional Use required	n						
D See Definition in Article 16	t						
	i						
	o						
	n						
Not Listed Elsewhere							
Agriculture	D		P				
Animal Shelter	D					CU	CU
Cemeteries	D		CU	CU	CU		
Funeral Home	D				CU	CU	
Kennel, Commercial	D					CU	CU
Kennel, Non-Commercial	D		CU				
<u>Marijuana Establishment</u>	<u>D</u>					<u>CU</u>	<u>CU</u>
Veterinary Clinics and Hospitals	D					CU	CU

Section 2. Amend Article 16 (Definitions) by making insertions as shown by underline and deletions as shown by strike through as follows:

* * *

MANUFACTURING—Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins, or liquors; includes all mechanical or chemical transformations regardless of whether the new product is finished or is semi-finished as a raw material for further processing.

MARIJUANA CULTIVATION FACILITY—An establishment operated by an entity licensed by the State of Delaware to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers. A marijuana cultivation facility may not produce marijuana concentrates, tinctures, extracts, or other marijuana products.

MARIJUANA ESTABLISHMENT—A marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, marijuana retail store, registered compassion center, or registered safety compliance facility as those terms are further defined herein.

MARIJUANA PRODUCT MANUFACTURING FACILITY—An establishment operated by an entity licensed by the State of Delaware to do the following: purchase marijuana; manufacture, prepare,

and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and retail marijuana stores, but not to consumers.

MARIJUANA RETAIL STORE— An establishment operated by an entity licensed by the State of Delaware to purchase marijuana from marijuana cultivation facilities; to purchase marijuana and marijuana products from marijuana product manufacturing facilities; and to sell marijuana and marijuana products to consumers.

MARIJUANA TESTING FACILITY— An establishment operated by an entity licensed by the State of Delaware to test marijuana for potency and contaminants.

MEDICAL CLINIC—An establishment where patients are admitted for examination and treatment on an outpatient basis by 1 or more physicians, dentists, other medical personnel, psychologists, or social workers and where patients are not lodged overnight.

* * *

RECREATION FACILITY—A place designed and equipped for the conduct of sports and leisure-time activities.

REGISTERED COMPASSION CENTER— An establishment operated by a not-for-profit entity registered with the State of Delaware pursuant to 16 *Del. C.* § 4914A that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, or dispenses marijuana, paraphernalia, or related supplies and educational materials to registered qualifying patients who have designated the dispenser to cultivate marijuana for their medical use and the registered designated caregivers of these patients.

REGISTERED SAFETY COMPLIANCE FACILITY—An establishment operated by a nonprofit entity registered under 16 *Del. C.* § 4915A by the State of Delaware to provide 1 or more of the following services: testing marijuana produced for medical use or under Chapter 13 of Title 4 for potency and contaminants; and training cardholders, compassion center agents, and owners and employees of entities operating under Chapter 13 of Title 4 of the Delaware Code. The training may include, but need not be limited to, information related to 1 or more of the following:

- (a) The safe and efficient cultivation, harvesting, packaging, labeling, and distribution of marijuana;
- (b) Security and inventory accountability procedures; and
- (c) Up-to-date scientific and medical research findings related to medical marijuana.

RESTAURANT—(1) Establishments where food and drink are prepared, served, and sold primarily for consumption within the principal building; (2) Establishments where food and/or beverages are sold in a form ready for consumption, where all or a significant portion of the consumption takes place or is designed to take place outside of the confines of the restaurant, and where ordering and pickup of food may take place from an automobile.

Section 3. Amend Section 15-5 (Conditional-Use Permits) by making insertions as shown by underline and deletions as shown by strike through as follows:

- 9. Boardinghouse
 - a. A boarding house shall only be permitted in a single family detached dwelling.
 - b. a maximum of three boarders shall be permitted in any one dwelling unit.
 - c. The owner shall reside in the same or an immediately adjacent building.
 - d. The structure must be in conformance with the Delaware State Housing Code.

10. Marijuana establishments

- a. The number of active conditional use permits for these categories of marijuana establishments at any given time shall not exceed the following:
 - (1) Marijuana Cultivation Facility, Marijuana Product Manufacturing Facility, Marijuana Testing Facility: 2 permits.
 - (2) Marijuana Retail Store: 1 permit.
- b. If multiple conditional use applications are submitted for the same category of marijuana establishment and multiple applications are determined to satisfy the criteria for granting a conditional use permit approval, the approval shall be granted to the applications that are determined to most completely satisfy the criteria. If a conditional use permit application is submitted while another conditional use permit application is pending, the Town may delay consideration of the pending application so that both applications may be given full consideration and heard at the same time.
- c. No conditional use permit applications for the categories of marijuana establishments in a(1) and a(2) of this section will be accepted prior to April 1, 2027, to allow time for the Town of Wyoming to observe the implementation of legal adult-use recreational marijuana sales in the State of Delaware and consider impacts to small municipalities.

Section 4. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that the Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council's intent.

Section 5. Effective Date. This Ordinance shall become effective immediately upon its adoption by the Town Council.

Synopsis

This ordinance amends the Land Use and Development Code of the Town of Wyoming to permit marijuana establishments in the C and I-1 zoning districts only, subject to conditional use approval. This ordinance also states that no conditional use permits for a Marijuana Cultivation Facility, Marijuana Product Manufacturing Facility, Marijuana Testing Facility, or Marijuana Retail Store will be accepted until after April 1, 2027.

This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Wyoming at a duly-noticed and convened meeting at which a quorum was present on October 7, 2024.

So Certifies:

Attest: *Norma Laman*
Town Clerk

David D. [unclear]
Mayor

This shall certify that a copy of this Ordinance was posted at the Town Hall on October 8, 2024.

10/7/2024
Date

So Certifies:
Audrey Lindale