

Ordinance No. 1009-17

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976 by enacting new Section 347.19 and to amend Section 343.11 of the Codified Ordinances of Cleveland Ohio, 1976, as amended by Ordinance No. 1396-14, passed December 10, 2014 and Section 345.02, as amended by Ordinance No. 2215-96, passed April 7, 1997, relating to state-licensed medical marijuana cultivators, processors, retail dispensaries, and testing laboratories.

Council Member Brancatelli

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances of the City of Cleveland, 1976 are supplemented by enacting new Section 347.19 to read as follows:

Section 347.19 State-licensed Medical Marijuana Cultivators, Processors, Retail Dispensaries and Testing Laboratories

(a) *Purpose.* This section regulates the location and separation of State-licensed Medical Marijuana Cultivators, Processors, Retail Dispensaries, and Testing Laboratories in order to protect the public health and safety and to protect the character of residential areas. This section complies with Ohio Revised Sections 3796.29 and 3796.30 and does not intend to impair the use of state-licensed medical marijuana entities.

(b) *Definitions.* As used in this section and Zoning Code, and defined in the Ohio Administrative Rules 3696:1-1-01 (A):

(1) “Cultivator” means an entity that has been issued a certificate of operation by the Ohio Department of Commerce to grow, harvest, package, and transport medical marijuana as permitted under Chapter 3796 of the Ohio Revised Code.

(2) “Manufacture” means the process of converting harvested plant material into Marijuana extract by physical or chemical means for use as an ingredient in a medical marijuana product.

(3) “Medical marijuana” means marijuana that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.

(4) “Medical marijuana entity” means a licensed medical marijuana cultivator, processor, dispensary or testing laboratory.

(5) “Processor” means an entity that has been issued a certificate of operation by the Ohio Department of Commerce to manufacture medical marijuana products.

(6) “Retail Dispensary” means an entity licensed pursuant to section 3796.04 and 3796.10 of the Revised Code and any rules promulgated thereunder to sell medical marijuana to qualifying patients and caregivers.

(7) “Testing laboratory” means an independent laboratory located in Ohio that has been issued a certificate of operation by the Ohio Department of Commerce to have custody and use of controlled substances for scientific and medical purposes and for purposes of instruction, research, or analysis.

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(c) *Location.* Where permitted in a particular use district, no state-licensed medical marijuana cultivator, processor, retail dispensary or laboratory that tests medical marijuana, shall be located or relocated within 500 feet of the boundaries of a parcel of real estate having situated on it a school, church, public library, public playground or public park. This requirement does not apply to research related to marijuana conducted at a state university, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity. (ORC Section 3796.30).

(d) *Separation.* No state-licensed cultivator, processor, or retail dispensary shall be established on a lot or lots within one thousand (1,000) feet of a residence district.

Section 2. That Section 343.11 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 1396-14, passed December 8, 2014 and Section 345.02, as amended by Ordinance No. 2215-96, passed April 7, 1997 are amended to read as follows:

Section 343.11 General Retail Business Districts

(a) “General retail business” means an enterprise for profit for the convenience and service of, and dealing directly with, and accessible to, the ultimate consumer; neither injurious to adjacent premises or to the occupants thereof by reason of the emission of cinders, dust, fumes, noise, odors, refuse matter, smoke, vapor or vibrations; nor dangerous to life or property. It includes buildings or spaces necessary to a permitted use for making or storing articles to be sold at retail on the premises. Except as provided in division (b) of this section, it does not include any establishment which supplies a retail outlet other than that on the premises, or any building or use specifically mentioned as permitted only in a Semi-Industry or Industry District.

(b) *Permitted Buildings and Uses.* The following buildings and uses are permitted in a General Retail Business District; and no buildings or premises shall hereafter be erected, altered, used, arranged or designed to be used, in whole or in part for other than one (1) or more of the following specified uses:

(1) Except as otherwise provided in this Zoning Code, all uses permitted and as regulated in any Local Retail Business District;

(2) All retail business uses and buildings specified in division (b) of Section 343.01, and uses and buildings to provide for:

A. The sale of food and beverages of all kinds, including sale for consumption on the premises;

B. The sale of general merchandise, including sale in department stores;

C. The sale of apparel of all kinds;

D. The sale of furniture and household goods, including furniture and accessory furniture storage;

E. The sale of other goods or merchandise;

F. Eating places of all types;

G. Service establishments: service establishments permitted in a Local Retail Business District without limitation on the number of persons engaged in such work or business; mortuary or undertaking establishment; printing shop, provided not more than five (5) persons are engaged in such work or business; research laboratory, radio or television station, telephone exchange or transformer station, provided all buildings and structures except fences and barriers are located not less than fifteen (15) feet from a Residence District; hospital, sanitarium, convalescent home, rest home, nursing home, orphanage or home for the infirm or aged, provided that all main

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buildings are not less than fifteen (15) feet from any adjoining premises in a Residence District not used for a similar purpose; cat and dog hospital or pet shop, provided noise and odors are effectively confined to the premises;

H. Business offices and services: in addition to the uses permitted in Local Retail Districts, office buildings, banks, business colleges, private trade schools;

I. Automotive services: in addition to the uses permitted in Local Retail Districts:

1. Motor vehicle service station, as defined in Section 325.486, and meeting the provisions of Section 343.14;

2. Car wash, as defined in Section 325.111, and meeting the provisions of Section 343.14;

3. Motor vehicle service garage, as defined in Section 325.487, and meeting the provisions of Section 343.14;

4. Motor vehicle sales facility, as defined in Section 325.485, except for vehicles exceeding six thousand (6,000) pounds of gross vehicle weight.

J. House trailer or travel trailer park, as defined in RC 3733.01, when approved by the Board of Zoning Appeals after public hearing, and when used and maintained in conformity with any conditions specified in such approval;

K. Signs: signs permitted in accordance with the requirements of Chapter 350;

L. Amusement and recreation: armory, assembly hall, bowling alley, dance hall, video and pinball arcade, pool and billiards theater, skating rink or other social, sport or recreational center operated as a business, all such uses subject to the regulations of Section 347.12 and adult entertainment uses, subject to Section 347.07, provided that the place or building in which any such amusement or recreation use is operated is sufficiently sound-insulated to confine the noise to the premises;

M. Transportation services: railroad station; public service station; bus passenger station; bus terminal, provided the roadway of the street upon which the bus entrance or exit is located is at least forty-four (44) feet wide between curbs;

N. Office, display or sales space of a wholesale, jobbing or distributing establishment and specifically mentioned as permitted only in a less restricted district, in connection with which not more than twenty-five percent (25%) of the floor area of the building or part of the building occupied by the establishment is used for making, assembling, remodeling, repairing, altering, finishing or refinishing its products or merchandise and provided that:

1. Any resulting cinders, dust, fumes, noise, odors, refuse matter, smoke, vapor or vibration is effectively confined to the premises;

2. The ground floor premises facing upon and visible from a major street upon which the premises abut shall be used only for entrances, offices or display;

3. Adequate off-street loading and unloading facilities are provided and so designed that any standing vehicles using them shall be within the property lines and be either not visible from streets within Retail Business, Local Retail Business or Residence District, or not nearer than fifty (50) feet to such streets.

O. Retail poultry business: either as a main use or as an accessory use, including the storing and killing of poultry or game to be sold entirely at retail upon the premises and directly to the ultimate consumer, provided that the enterprise is conducted in strict compliance with all applicable statutes, laws, rules and regulations, including those requiring rat-proofing, and that adjacent premises or the occupants thereof are not injured by reason of the emission of dust, odor, smoke or noise or the accumulation of refuse or offal, and provided further that the

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buildings in which the killing, storing and selling are done are either detached masonry structures or part of a masonry building used entirely for the handling of poultry and/or game.

1. A detached masonry structure used for slaughtering or for storing of live poultry shall have not less than one hundred (100) square feet of floor area and shall be located at least ten (10) feet from any other building or part thereof on the same lot which is used for human habitation, or as a place where other food is prepared, placed, kept or sold.

2. Where the slaughtering room is part of a masonry building used entirely for the handling of poultry and/or game, such slaughtering room shall be separated from the sales or storage room by a solid masonry wall in which there may be only one (1) opening not greater than four (4) square feet in size, located not less than four (4) feet above the floors of both rooms, equipped with either a self-closing window or self-closing door. Such slaughtering room shall be entered only from outside the building.

3. In either case, such slaughtering room shall be used only for killing, flicking and dressing and shall be not less than twenty- five (25) feet from the boundary of the premises upon which it is located. All offal and refuse must be kept in covered containers within such slaughtering room until removed from the premises.

Such slaughtering room and every building, room or space used for storage or sale of poultry or game in connection therewith shall be not less than three hundred (300) feet from any Residence District, church, school, playground, library or building of Institutional H Occupancy classification.

P. Tattooing and body piercing. As used in this division:

1. "Body Piercing" means the piercing of any part of the body by someone other than a physician licensed under RC Chapter 4731, who utilizes a needle or other instrument for the purpose of inserting an object into the body for non-medical purposes; body piercing includes ear piercing except when the ear piercing procedure is performed on the ear with an ear piercing gun.

2. "Tattoo" means any method utilizing needles or other instruments by someone other than a physician licensed under RC Chapter 4731, to permanently place designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of a person with ink or any other substance resulting in an alteration of the appearance of the skin.

Q. Kennels, either as a main use or an accessory use, provided that all odors, fumes, and noise be confined to the premises and the lot upon which the kennel is located is greater than one hundred (100) feet from a residence district.

1. Notwithstanding division (d)(3) of Section 329.03, the Board, on application for a use variance, may permit a Kennel in any use district.

2. The limitations stated in divisions (b) and (c) of Section 329.03 shall not apply when deciding whether to issue a use variance for a Kennel, the Board shall evaluate the applicant Kennel's probable impact on the overall tranquility of the surrounding properties by considering all odors, noises, and fumes that will emanate from the lot on which the applicant Kennel is located.

R. Any other building, use or service similar to the uses herein listed in the type of services or goods sold, in the number of persons or cars to be attracted to the premises or in the effect upon adjacent areas in more restricted use districts;

S. Any accessory use customarily incident to a use authorized by this section, except that no use specified in divisions (b) and (c) of Section 345.04 as prohibited or permitted only by special permit in a General Industry District shall be permitted as an accessory use;

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T. Hookah Lounge: any facility, establishment or location with patron seating or that is classified or seeks classification as an assembly use as defined in the Ohio Building Code whose business operation includes the smoking of tobacco or any organic or synthetic material, including but not limited to plants, herbs or tobacco, through one or more hookah pipes (also commonly referred to as a hookah, waterpipe, shisha or narghile), including but not limited to establishments known variously as hookah bars, hookah lounges, or hookah cafes that are exempt from the Smoke Free Workplace Act under RC 3794.03;

U. Vapor Lounge: any facility, establishment or location, whether fixed or mobile, with patron seating or that is classified or seeks classification as an assembly use as defined in the Ohio Building Code whose business operation includes the utilization of a heating element that vaporizes a substance that releases nicotine, tobacco, flavored vapor, or vapor or fumes from any other organic or synthetic material including but not limited to plants, herbs or tobacco, through one or more electronic or battery operated delivery device, including any device known as an electronic cigarette (also commonly referred to as e-cig, e-cigarette, e-pipe, electronic cigarillo, hookah pen, vape pen, vape pipe or any other electronic cigarette product), including but not limited to establishments known variously as vape bars, vape lounges, e-cigarette bars or vape cafes.

V. State-licensed Medical Marijuana Retail Dispensary, as defined in and subject to Section 347.19 of this Code.

(3) Hotels;

(4) Motels;

(5) Charitable institutions, including correctional halfway houses, as regulated in Section 347.15; and notwithstanding any Section of the Codified Ordinances of Cleveland, Ohio, 1976, to the contrary, the Cuyahoga County Youth Intervention Center, providing temporary detention and shelter for juveniles, to be located at East 93rd Street, and Quincy Avenue.

345.02 Permitted Buildings and Uses in Residence-Industry District

Within any Residence-Industry District no building or premises shall be erected, altered, used, arranged or designated to be used, in whole or in part for other than one (1) or more of the following specified uses, provided that:

(a) All resulting cinders, dust, flashing, fumes, gases, noises, odors, refuse matter, smoke, vapors and vibrations are effectively confined to the premises;

(b) All materials are stored inside buildings;

(c) Setback building lines to the same extent as required in this Zoning Code for Residence Districts are observed on any street on which the Residence- Industry District adjoins a Residence District, and suitable planting is maintained in the setback area. Side yards and rear yards not less than twenty-five (25) feet are provided at lot lines which are also boundary lines of Residence Districts or of lots used for residences in a Local Retail Business District or Shopping Center district. A chain link fence not less than six (6) feet high is constructed on lot lines which are also boundary lines of Residence districts or of lots used for residences in a Local Retail Business District or Shopping Center District;

(d) There are adequate off-street loading and unloading facilities so designed that any standing vehicle using them is within the property lines and is either not visible from streets or not nearer than fifty (50) feet to streets;

(e) There is adequate off-street car parking for the employees, owners and others coming to the premises on matters incidental to the uses thereof, and adequate off-street parking of trucks in space so located as not to be visible from the streets or not nearer than fifty (50) feet to streets;

(f) Entrance and exit to any building or premises are from a street designated as a major thoroughfare on the general plan adopted by the City Planning Commission or, if the premises in question does not abut such street, then from any street approved by the Board of Zoning

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Appeals if it finds the probable volume and type of traffic to such premises will not change materially the existing character of such streets nor be detrimental to the adjoining or adjacent residential area;

(g) In the case of nonresidential use, trucking operations are not conducted evenings, nights, Sundays nor on holidays generally observed by business and single-shift industry:

(1) Any use permitted in a Multi-Family District;

(2) Office buildings, loft buildings, telephone exchanges, transformer stations, research laboratories;

(3) Retail tin shops and furnace shops, retail plumbing shops, and plumbing supply shops, signs, display or decorating shops, printing shops;

(4) The following uses if located not less than one hundred (100) feet from a Residence district: repair garage for repair or painting of motor vehicles, creamery, milk bottling or milk distributing stations;

(5) Operation of any internal combustion engines in connection with any use permitted in the District, provided such engines are equipped and operated only with an effective muffling device;

(6) Carpet cleaning, dry cleaning or dyeing, laundries, cold storage plants, bottling works, ice plants, ice cream plants, cigar factories;

(7) Wholesale, jobbing, distributing or warehouse establishments for such materials as cotton, wool, clothing, fabrics, furniture, hardware, ice, leather, metals other than scrap or junk metals, rubber, shop and store supplies, including the making, assembling, remodeling, repairing, altering, finishing or refinishing of these products or merchandise, provided the processes used comply with the limitations specified in this section;

(8) Machine shops in which only lathes, drill presses, hydraulic presses, shavers, milling machines, planers, grinders and similar tools are used, and no hammering, rolling, spinning, heat treating by other than induction processes or riveting is done and no forges, metal saws other than automatic hack saws, heavy shears, multiple spindle automatic screw machines or other noise or vibration-producing tools or machines are operated;

(9) Charitable institutions, including correctional halfway houses, as regulated in Section 347.15;

(10) Hospitals, sanitariums, nursing, rest or convalescent homes;

(11) State-licensed Medical Marijuana Cultivator, as defined in and subject to Section 347.19 of this Code.

(12) State-licensed Medical Marijuana Processor, as defined in and subject to Section 347.19 of this Code.

(13) Any other building or use similar in character and operation and in effect on conforming uses in adjoining more restricted use districts as the buildings or uses herein permitted.

Section 3. That existing Section 343.11 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 1396-14, passed December 8, 2014 and Section 345.02, as amended by Ordinance No. 2215-96, passed April 7, 1997 are repealed.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

DB/TB:jho
8/16/17

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**REPORT
after second Reading**

Council Member Brancatelli

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READ FIRST TIME on AUGUST 16, 2017 **REPORTS**
**and referred to DIRECTORS of Building and Housing,
City Planning Commission, Finance, Law;
COMMITTEES on Development Planning and Sustainability, Finance**

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

Recorded Vol. _____ Page _____

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COMMITTEE ON
DEVELOPMENT, PLANNING AND
SUSTAINABILITY**

FILED WITH COMMITTEE

**PASSAGE RECOMMENDED BY
COMMITTEE ON
FINANCE**

FILED WITH COMMITTEE

