



Millcreek Planning and Zoning
3330 South 1300 East
Millcreek, Utah 84106
Phone: (801) 214-2750

MEMORANDUM

From: Francis Xavier Lilly, AICP, Director
To: Staff
Date: 2 October 2019

RE: Administrative Determination Regarding Medical Cannabis Pharmacies and Cannabis Production Establishments
AD-19-002

By this Administrative Determination, Millcreek is hereby regulating *medical cannabis pharmacy*, as defined in Utah Code §26-21a-604, and *cannabis production establishment*, as defined in Utah Code §4-41a-102, as allowed land uses consistent with the purpose of the Millcreek Zoning Ordinance to promote the health, safety, morals, conveniences, order, prosperity and welfare of the present and future inhabitants of the City, and in a manner compliant with Utah State Code §54-41a-406 and 26-61a-507 that establish limits on local control of medical cannabis pharmacies and cannabis production establishments.

Statutory Authority and Rationale for Determination

Section 19.76.030 of the Millcreek Code ("the Code") stipulates that determination as to the classification of uses not specifically listed in this title shall be made by the division director and shall be subject to appeal to the planning commission. An appeal shall be filed in writing within ten days of the issuance of this determination, subject to the procedure outlined in §19.76.030 of the Code.

Medical Cannabis Pharmacy

State statute construes medical cannabis pharmacies as locations where prescriptions for medical cannabis are filled and sold in-person or by home delivery to a medical cannabis cardholder. Both the seller and the buyer are required to be registered by the state. This activity conforms to Millcreek's definition of *retail uses* as established by §19.04.463B of the Code:

19.04.463B Retail Uses

A category of uses involving the retail sale of goods or merchandise to the general public for personal or household consumption.

- A. *Neighborhood Retail. A use in this category occupies a space of less than 5,000 square feet. Neighborhood Retail is intended to enhance neighborhood commercial areas by promoting a concentration of businesses that provide goods and services used frequently by local residents with a scale and character that promotes a walk-in clientele. Typical Neighborhood Retail Uses include, but are not limited to: Alcohol & Liquor Sales as a secondary use, Apparel & Accessory Store, Art & Education Supplies, Bakery, Bicycle Sales & Repair, Book, Magazine, & Newspaper Store, Hardware, Garden Supply, Camera & Photo Supply Store, Convenience Store, Pharmacy, Fabric & Craft Store, Florist, Gift, Souvenir, Grocery Store, Jewelry Sales & Repair, Music Store, Musical Instrument Repair & Sales, Office Supply, Optical Goods, Paint & Wallpaper, Pet & Pet Supply, Restaurant/cafe, Specialty Food Market of all types, Copy Store, Toy Shop.*



Millcreek Planning and Zoning

3330 South 1300 East

Millcreek, Utah 84106

Phone: (801) 214-2750

B. *General Retail*. A use in this category includes all Neighborhood Retail uses and is intended to serve a community-wide market as well as regional markets. Typical General Retail Uses include, but are not limited to: All Neighborhood Retail, Appliance & Electronic Sales & Service, Automotive Supply (no service), Computer Software Sales & Leasing, Department Store, Gun Shop, Home Furnishings & Accessories Sales, Rental supply, Medical Supply Store & Rental, Motorcycle & Motor Scooter Sales, Heating, Air Conditioning & Plumbing Supplies, Sales, & Service, Cabinet Supply (display only), Machine Sales and Rental, Agriculture Equipment and Supply, Electrical Supplies.

The code broadly construes retail uses to include a variety of retail activities, and specifically refers to "pharmacy" in the list of neighborhood and general retail uses. Neighborhood Retail uses, which occupy a space less than 5,000 square feet, are permitted in Millcreek's Commercial and Mixed Use Zones, and General Retail uses, occupying spaces greater than 5,000 square feet, are conditional uses.

On the basis of the Code's broad definition of *retail use*, this determination establishes *medical cannabis pharmacy* as an allowed use within the category of *retail use*.

Cannabis Production Establishment

State statute defines cannabis production establishments to include cannabis cultivation facilities, cannabis processing facilities, or cannabis testing laboratories. Utah Code §4-41a-406 requires a municipality to establish a zone in which cannabis production establishments are permitted uses. The City's Light Manufacturing ("M") Zone, established in Chapter 19.66 of the Code. The M Zone defines *light manufacturing* as: "Manufacturing conducted predominately within an enclosed building predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, mixing/blending/compounding, treatment, research, testing and packaging of such products, and associated services, storage, sales (retail and wholesale) and distribution of such products, which minimizes noise, odors, vibration, hazardous waste materials, waste water runoff, or particulates that could be considered a nuisance to neighboring properties." The City's definition contemplates a broad range of activities, including processing and testing, subject to a standard to minimize environmental harm and public nuisances. Cannabis production establishments fit within this category, and would be subject to the same standards that apply to any other permitted light manufacturing use in the City.

On the basis of the Code's definition of *light manufacturing*, this determination establishes *cannabis production establishment* as an allowed use within the category of *light manufacturing*, which is a permitted use in the City's M Zone.

Licensing Requirements and Proximity Limitations

We note that State statute establishes proximity requirements for cannabis production establishments in Utah Code §4-41a-201 and for medical cannabis pharmacies in Utah Code §26-61a-301, among other licensing requirements. Millcreek staff are asked to follow these requirements, as well as this determination, in evaluating any future business license application for a medical cannabis pharmacy or a cannabis production establishment.