



WHITLEY COUNTY FISCAL COURT

ORDINANCE NO. 2024-08

ORDINANCE #2024-08

AN ORDINANCE RELATING TO THE PROHIBITION OF CANNABIS BUSINESS OPERATIONS IN THE COUNTY OF WHITLEY.

WHEREAS, on April 15, 2024, the Kentucky General Assembly adopted House Bill 829, signed into law by the Governor on April 17, 2024 amending KRS Chapter 218B, the Kentucky Medical Cannabis Chapter; and,

WHEREAS; KRS 218B.090 and 218B.130 authorize local governments to prohibit cannabis business operations within their territory through the passage of an ordinance; and,

WHEREAS; the County of Whitley wishes to utilize the authority granted to it by KRS 218B.090 and 218B.130 to prohibit cannabis business operations within the County of Whitley.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT, COUNTY OF WHITLEY, COMMONWEALTH OF KENTUCKY THAT;

Section One

Definitions

The definitions within KRS 218B.010 are hereby adopted as if set out herein and as relevant to this ordinance. (See attached)

Section Two

Cannabis Business Prohibited

All cannabis businesses are hereby prohibited from operating within Whitley County limits.


Section Three

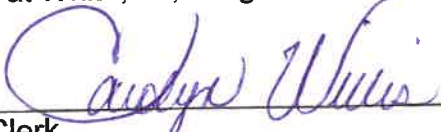
Effective Date

This ordinance shall be effective upon its enactment and publication by Whitley County.

First Reading


Done this 20TH day of August 2024 on a Motion made by Harrison and seconded by Jarboe.

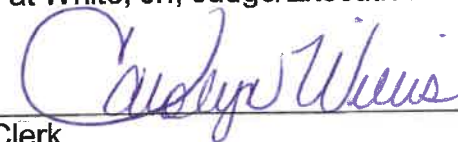
BY: 
Pat White, Jr., Judge/Executive

ATTEST: 
Clerk

Second Reading

Done this 17TH day of September 2024 on a Motion made by HARRISON and seconded by MEADES.

BY: 
Pat White, Jr., Judge/Executive

ATTEST: 
Clerk

218B.010 Definitions for chapter.

For the purposes of this chapter, unless the context otherwise requires:

- (1) "Bona fide practitioner-patient relationship" means a treating or consulting relationship, during the course of which a medicinal cannabis practitioner has:
 - (a) Completed an initial in-person examination and assessment of the patient's medical history and current medical condition which shall include a review of:
 1. The patient's medical records for the previous twelve (12) months;
 2. All other available medical records relevant to the patient's qualifying medical condition;
 3. Any medications that the patient is currently taking; and
 4. Any other possible risks or side effects that may be associated with the use of medicinal cannabis;
 - (b) Consulted with the patient with respect to the possible medical, therapeutic, and palliative properties of medicinal cannabis;
 - (c) Advised the patient of the possible risks and side effects associated with the use of medicinal cannabis, including possible interactions between medicinal cannabis and any other drug or medication that the patient is taking at that time; and
 - (d) Established an expectation that he or she will provide follow-up care and treatment to the patient in accordance with administrative regulations promulgated pursuant to KRS 218B.050(10);
- (2) "Cabinet" means the Cabinet for Health and Family Services;
- (3) "Cannabis business" means an entity licensed under this chapter as a cultivator, dispensary, processor, producer, or safety compliance facility;
- (4) "Cannabis business agent" means a principal officer, board member, employee, volunteer, or agent of a cannabis business;
- (5) "Cardholder" means:
 - (a) A registered qualified patient, designated caregiver, or visiting qualified patient who has applied for, obtained, and possesses a valid registry identification card issued by the cabinet; or
 - (b) A visiting qualified patient who has obtained and possesses:
 1. A valid out-of-state registry identification card; and
 2. Documentation of having been diagnosed with a qualifying medical condition;
- (6) "Cultivator" means an entity licensed as such under KRS 218B.080, 218B.085, and 218B.090;
- (7) "Cultivator agent" means a principal officer, board member, employee, volunteer, or agent of a cultivator;
- (8) "Designated caregiver" means a person who has registered as such with the cabinet under KRS 218B.055 and 218B.060;

- (9) "Dispensary" means an entity licensed as such under KRS 218B.080, 218B.085, and 218B.090;
- (10) "Dispensary agent" means a principal officer, board member, employee, volunteer, or agent of a dispensary;
- (11) "Disqualifying felony offense" means:
- (a) A felony offense that resulted in the person being classified by the Department of Corrections as a violent offender under KRS 439.3401; or
 - (b) A violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted, except:
 1. An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed five (5) or more years earlier; or
 2. An offense that, as determined by the cabinet, consisted of conduct for which this chapter would likely have prevented a conviction, but the conduct either occurred prior to the enactment of this chapter or was prosecuted by an authority other than the Commonwealth of Kentucky;
- (12) "Enclosed, locked facility" means an indoor growing space such as a room, greenhouse, building, or other indoor enclosed area that is maintained and operated by a cultivator or producer and is equipped with locks and other security devices that permit access only by authorized agents of the cultivator or producer, as required by the cabinet;
- (13) "Growth area" has the same meaning as an enclosed, locked facility;
- (14) "Marijuana" has the same meaning as in KRS 218A.010;
- (15) "Medicinal cannabis":
- (a) Means marijuana as defined in KRS 218A.010 when cultivated, harvested, processed, produced, transported, dispensed, distributed, sold, possessed, or used in accordance with this chapter;
 - (b) Includes medicinal cannabis products and raw plant material; and
 - (c) Does not include industrial hemp or industrial hemp products as defined in KRS 260.850;
- (16) "Medicinal cannabis accessories" means any equipment, product, or material of any kind which is used, intended for use, or designed for use in the preparing, storing, using, or consuming medicinal cannabis in accordance with this chapter;
- (17) "Medicinal cannabis practitioner" means a physician or an advanced practice registered nurse who is authorized to prescribe controlled substances under KRS 314.042, who is authorized by his or her state licensing board to provide written certifications pursuant to KRS 218B.050;
- (18) "Medicinal cannabis product":
- (a) Means any compound, manufacture, salt, derivative, mixture, or preparation of any part of the plant Cannabis sp., its seeds or its resin; or any compound, mixture, or preparation which contains any quantity of these substances when cultivated, harvested, processed, produced, transported, dispensed, distributed, sold, possessed, or used in accordance with this chapter; and

- (b) Does not include industrial hemp products as defined in KRS 260.850;
- (19) "Minor" means a person less than eighteen (18) years of age;
- (20) "Out-of-state registry identification card" means a registry identification card, or an equivalent document, that was issued pursuant to the laws of another state, district, territory, commonwealth, or insular possession of the United States;
- (21) "Processor" means an entity licensed as such under KRS 218B.080, 218B.085, and 218B.090;
- (22) "Processor agent" means a principal officer, board member, employee, volunteer, or agent of a processor;
- (23) "Producer" means an entity licensed as such under KRS 218B.080, 218B.085, and 218B.090;
- (24) "Producer agent" means a principal officer, board member, employee, volunteer, or agent of a producer;
- (25) "Qualified patient" means a person who has obtained a written certification from a medicinal cannabis practitioner with whom he or she has a bona fide practitioner-patient relationship;
- (26) "Qualifying medical condition" means:
 - (a) Any type or form of cancer regardless of stage;
 - (b) Chronic, severe, intractable, or debilitating pain;
 - (c) Epilepsy or any other intractable seizure disorder;
 - (d) Multiple sclerosis, muscle spasms, or spasticity;
 - (e) Chronic nausea or cyclical vomiting syndrome that has proven resistant to other conventional medical treatments;
 - (f) Post-traumatic stress disorder; and
 - (g) Any other medical condition or disease for which the Kentucky Center for Cannabis established in KRS 164.983, or its successor, determines that sufficient scientific data and evidence exists to demonstrate that an individual diagnosed with that condition or disease is likely to receive medical, therapeutic, or palliative benefits from the use of medicinal cannabis;
- (27) "Raw plant material":
 - (a) Means the trichome-covered part of the female plant Cannabis sp. or any mixture of shredded leaves, stems, seeds, and flowers of the Cannabis sp. plant; and
 - (b) Does not include plant material obtained from industrial hemp as defined in KRS 260.850;
- (28) "Registered qualified patient" means a qualified patient who has applied for, obtained, and possesses a valid registry identification card issued by the cabinet;
- (29) "Registry identification card" means a document issued by the cabinet that identifies a person as a registered qualified patient, visiting qualified patient, or designated caregiver;
- (30) "Safety compliance facility" means an entity licensed as such under KRS 218B.080, 218B.085, and 218B.090;

- (31) "Safety compliance facility agent" means a principal officer, board member, employee, volunteer, or agent of a safety compliance facility;
- (32) "Seedling" means a medicinal cannabis plant that has no flowers and is not taller than eight (8) inches;
- (33) "Serious violation" means:
- (a) Any violation of this chapter or any administrative regulation promulgated thereunder that is capable of causing death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ;
 - (b) The diversion of medicinal cannabis for use not regulated pursuant to this chapter; or
 - (c) Any act that would constitute a violation of KRS 218A.1421;
- (34) "Smoking" means the inhalation of smoke produced from the combustion of raw plant material when ignited by a flame;
- (35) "State licensing board" means:
- (a) The Kentucky Board of Medical Licensure; or
 - (b) The Kentucky Board of Nursing;
- (36) "Telehealth" has the same meaning as in KRS 211.332;
- (37) "Use of medicinal cannabis":
- (a) Includes the acquisition, administration, possession, transfer, transportation, or consumption of medicinal cannabis or medicinal cannabis accessories by a cardholder in accordance with this chapter; and
 - (b) Does not include:
 - 1. Cultivation of marijuana by a cardholder;
 - 2. The use or consumption of marijuana by smoking; or
 - 3. The use of industrial hemp or industrial hemp products as defined in KRS 260.850;
- (38) "Visiting qualified patient" means a person who has registered as such through the cabinet as required under this chapter or who possesses a valid out-of-state registry identification card and documentation of having been diagnosed with a qualifying medical condition; and
- (39) "Written certification" means a document dated and signed by a medicinal cannabis practitioner, that:
- (a) States, that in the medicinal cannabis practitioner's professional medical opinion, the patient may receive medical, therapeutic, or palliative benefit from the use of medicinal cannabis;
 - (b) Specifies the qualifying medical condition or conditions for which the medicinal cannabis practitioner believes the patient may receive medical, therapeutic, or palliative benefit; and
 - (c) Affirms that the medicinal cannabis practitioner has a bona fide practitioner-patient relationship with the patient.

Effective: April 17, 2024

History: Amended 2024 Ky. Acts ch. 195, sec. 1, effective April 17, 2024. -- Created 2023 Ky. Acts ch. 146, sec. 1, effective June 29, 2023.

Legislative Research Commission Note (6/29/2023). Although the medicinal cannabis program established by 2023 Ky. Acts ch. 146, secs. 1 to 30, was originally drafted as new sections of KRS Chapter 218A, KRS Chapter 218B was created during codification to contain the subject.

218B.130 Local government -- Ordinances regulating or prohibiting cannabis -- Establishment of local fees -- City within a county that prohibits cannabis may enact ordinance to approve -- Public question -- Procedures -- Local government to notify cabinet of decision to prohibit cannabis business.

- (1) For the purposes of this section, "local government" means a city, county, urban-county government, consolidated local government, charter county government, or unified local government.
- (2) A local government:
 - (a) Prior to the cabinet issuing a license to a cannabis business to conduct business operations within its territory, may:
 1. Prohibit all cannabis business operations within its territory through the passage of an ordinance; or
 2. Enact resolutions directing that the question of prohibiting cannabis businesses from operating within its territory be submitted to the voters of its territory at the next regular election pursuant to subsection (3)(b) of this section;except as provided in KRS 218B.090(5); and
 - (b) Within whose territory cannabis business operations are permitted, may enact ordinances:
 1. That are not less restrictive than this chapter or any administrative regulations promulgated thereunder, relating to the time, place, and manner of cannabis business operations, except that a local government shall not, except as permitted in paragraph (a) of this subsection, enact ordinances that impose an undue burden or make cannabis business operations unreasonable or impractical; and
 2. To establish and assess reasonable local fees to compensate for any additional costs caused by the operation of cannabis businesses within its territory. Any fees assessed pursuant to this subparagraph shall not exceed the additional costs caused by the operation of cannabis businesses.
- (3) (a) If a county, consolidated local government, charter county government, or unified local government prohibits all cannabis business operations, the legislative body of a city located within the county, consolidated local government, charter county government, or unified local government may:
 1. Approve cannabis business operations within the limits of the city through the passage of an ordinance; or
 2. Enact resolutions directing that the question of allowing cannabis businesses to operate within the limits of the city be submitted to the voters who are eligible to vote in that city's elections at the next regular election pursuant to paragraph (b) of this subsection.
- (b) If, not later than the second Tuesday in August preceding the day established for a regular election, the county clerk has received a local government resolution pursuant to subsection (2) of this section or paragraph (a) of this

subsection, the county clerk shall have prepared to place before the voters of the affected territory at the next regular election the question, which shall be "Are you in favor of the sale of medicinal cannabis at a licensed dispensary and the operation of other cannabis businesses in (affected territory)? Yes....No....". The county clerk shall cause to be published in accordance with KRS Chapter 424, at the same time as the remaining voter information, the full text of the proposal. The county clerk shall cause to be posted in each polling place one (1) copy of the full text of the proposal.

- (4) If a local government legislative body with jurisdiction prohibits cannabis business operations through the passage of an ordinance, a public question that is initiated by petition and that proposes allowing a cannabis business to operate within the affected territory is authorized.
- (5) A public question that is initiated by petition and is authorized by subsection (4) of this section shall be submitted to the voters within the affected territory at the next regular election by complying with the following requirements:
 - (a) Before a petition for submission of the proposal may be presented for signatures, an intent to circulate the petition, including a copy of the unsigned petition, shall be filed with the county clerk of the affected territory by a person or group of persons who have been registered to vote in the affected territory for at least the previous twelve (12) months seeking the submission of the public question. The statement of intent shall include the addresses of the person or group of persons and shall specify the person or group of persons, as well as the address, to whom all notices are to be sent. Within ten (10) days after the intent to circulate the petition is filed, the county clerk shall deliver a copy of the intent to circulate the petition, including a copy of the unsigned petition, to the legislative body of the affected territory;
 - (b) The petition shall set out in full the following question: "Are you in favor of overturning the decision of the local government legislative body and allowing the sale of medicinal cannabis at a licensed dispensary and the operation of other cannabis businesses in (affected territory)?";
 - (c) The petition for the submission of the proposal shall be signed by a number of constitutionally qualified voters of the territory to be affected equal to ten percent (10%) of registered voters for the affected territory;
 - (d) Each signature shall be executed in ink or indelible pencil and shall be followed by the legibly printed name of each voter, followed by the voter's residence address, year of birth, and the correct date upon which the voter's name was signed;
 - (e) No petition for the submission of the proposal shall be circulated for more than six (6) months prior to its filing;
 - (f) After a petition for the submission of the proposal has received no fewer than the number of qualifying signatures required by paragraph (c) of this subsection, the signed petition shall be filed with the county clerk. When it is filed, each sheet of the petition shall have an affidavit executed by the circulator stating that he or she personally circulated the sheet, the number of signatures thereon, that all signatures were affixed in his or her presence, that

he or she believes them to be the genuine signatures of registered voters within the affected territory, and that each signer had an opportunity before signing to read the full text of the proposal;

- (g) No signer of the petition may withdraw his or her name or have it taken from the petition after the petition has been filed. If the name of any person has been placed on the petition for submission of the public question without that person's authority, the person may, at any time prior to certification of sufficiency of the petition by the county clerk as required by paragraph (h) of this subsection, request the removal of his or her name by the county board of elections and, upon proof that the person's name was placed on the petition without his or her authority, the person's name and personal information shall be eliminated, and he or she shall not be counted as a petitioner;
 - (h) Within thirty (30) days after the petition is filed, the county clerk shall complete a certificate as to its sufficiency or, if it is insufficient, specifying the particulars of the insufficiency, and shall send a copy to the person or persons specified in the statement of intent to receive all notices and to the legislative body of the affected territory, all by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once by filing a supplemental petition upon additional sheets within thirty (30) days after receiving the certificate of insufficiency. The supplemental petition shall comply with the requirements applicable to the original petition and, within ten (10) days after it is filed, the county clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of the certificate to the person or persons specified to receive all notices and to the legislative body of the affected territory by registered mail;
 - (i) A final determination as to the sufficiency of a petition shall be subject to review in the Circuit Court of the county of the affected territory and shall be limited to the validity of the county clerk's determination. A final determination of insufficiency shall not prejudice the filing of a new petition for the same purpose; and
 - (j) If, not later than the second Tuesday in August preceding the day established for a regular election, the county clerk has certified that a petition is sufficient, the county clerk shall have prepared to place before the voters of the affected territory at the next regular election the question, which shall be "Are you in favor of overturning the decision of the local government legislative body and allowing the sale of medicinal cannabis at a licensed dispensary and the operation of other cannabis businesses in (affected territory)? Yes....No....". The county clerk shall cause to be published in accordance with KRS Chapter 424, at the same time as the remaining voter information, the full text of the proposal. The county clerk shall cause to be posted in each polling place one (1) copy of the full text of the proposal.
- (6) If the question submitted to the voters under subsection (3) or (5) of this section fails to pass, three (3) years shall elapse before the question of medicinal cannabis sales and cannabis business operations may be included on a regular election ballot

for the affected territory.

- (7) If the question submitted to the voters under subsection (3) or (5) of this section passes, medicinal cannabis sales and cannabis business operations may be conducted in the affected territory, notwithstanding any local government ordinances which prohibit all cannabis business operations within its territory.
- (8) In circumstances where a county, consolidated local government, charter county government, or unified local government prohibits cannabis business operations but a city within that county, consolidated local government, charter county government, or unified local government approves cannabis business operations either through the adoption of an ordinance or following the affirmative vote of a public question allowing cannabis business operations, then:
 - (a) The cannabis business operations may proceed within the limits of the city; and
 - (b) The county, consolidated local government, charter county government, or unified local government may assess an additional reasonable fee to compensate for any additional corrections impact caused by the approval of cannabis business operations. Any additional fees collected pursuant to this subsection shall not exceed the additional corrections impact caused by the approval of cannabis business operations.
- (9) In circumstances where neither a city nor the county, urban-county government, consolidated local government, charter county government, or unified local government in which the city is located prohibit cannabis business operations, a cannabis business that is located within the jurisdiction of both the city and the county shall only pay the reasonable established local fees of either the city or the county. The fee shall be established, assessed, collected, and shared between the city and the county, in a manner to be negotiated between the city and the county.
- (10) The provisions of general election law shall apply to public questions submitted to voters under this section.
- (11) If a local government elects, pursuant to subsection (2)(a) of this section, to prohibit cannabis business operations within its territory, the local government shall notify the cabinet in writing of its decision to prohibit cannabis business operations within five (5) days after passage of such an ordinance or after the results of a ballot question to prohibit cannabis business operations are certified.

Effective: April 17, 2024

History: Amended 2024 Ky. Acts ch. 195, sec. 13, effective April 17, 2024. -- Created 2023 Ky. Acts ch. 146, sec. 25, effective June 29, 2023.