

**CITY OF BOULDER
PLANNING BOARD AGENDA ITEM**

MEETING DATE: November 5, 2009

AGENDA TITLE: Discussion and direction regarding proposed regulatory changes regarding the growing, dispensing, and processing of medical marijuana.

REQUESTING DEPARTMENT:

David Driskell, Executive Director of Community Planning and Sustainability
Maureen Rait, Executive Director of Public Works
Kathy Haddock, Senior Assistant City Attorney
Charles Ferro, Acting Land Use Review Manager
Brian Holmes, Zoning Administrator

1. Executive Summary

As noted in the City Council Weekly Information Packet (WIP) forwarded to the Planning Board on October 30, 2009, the issues surrounding medical marijuana have become more relevant since the approval of Amendment 20 in November 2000. (For additional background information regarding the Colorado Medical Marijuana Amendment, associated state processes as well as information regarding current local issues related to medical marijuana, please see the October 30, 2009 City Council WIP).

Since February 2009, there have been 35 medical marijuana dispensaries that have either opened, applied for a business license, or advertised to be open within the city. Additionally, the city's Building Department has seen an increase in applications for permits to improve buildings (electrical and otherwise) for the purpose of cultivating medical marijuana. Similarly, staff has been receiving several inquiries a day over the past several weeks regarding suitable locations in the city for growing, dispensing, and processing medical marijuana. At present, there are no regulations that specifically address how medical marijuana may be grown, dispensed, or processed within the city.

The purpose of this memorandum is to provide Planning Board with options for the future regulation of medical marijuana within the city. Specifically, staff would like to receive preliminary feedback regarding:

- a. Whether the board would like to allow or prohibit such uses within the city. (The state constitution allows for personal possession and cultivation for medical uses but does not explicitly condone or prohibit larger scale cultivation and/or dispensing).
- b. If commercial medical marijuana uses are to be allowed, whether the board feels that regulations are needed to address issues related to the location and operation of such uses.

- c. Whether the city should impose a moratorium on any additional permits related to commercial growing, dispensing, and processing of medical marijuana within the city while regulations are prepared.
- d. If a moratorium is appropriate, what should the goals of the staff work plan be during the moratorium period?

2. Options / Alternatives Analysis

Staff has identified several options for future potential regulation of medical marijuana within the city:

a. Prohibition:

Based on input from the City Attorney's office, it is possible to amend the existing sales tax license process to require business owners to certify that a business is legal at the federal, state, and local level. Since marijuana (whether possessed, sold, distributed, cultivated, or processed for medicinal purposes or not) is still illegal at the federal level, this measure would effectively prohibit the operation of commercial dispensaries or growers in Boulder under federal law. It would not, however, affect the personal production, possession and use of medical marijuana as allowed under the state's constitution.

b. Moratorium:

A moratorium would prohibit new business from growing, dispensing, and or processing medical marijuana within the city for a specified period of time. The purpose of the moratorium would be to allow Planning Board and City Council time to direct staff to draft regulations related to commercial medical marijuana operations in the city and bring them back for public review and board and council approval.

c. No Action:

If no action is taken, the commercial growing, dispensing, and processing of medical marijuana within the city will remain unregulated.

3. Actions of Surrounding Communities

Refer to **Attachment A** for information related to how other local governments in the state are responding to the issues surrounding medical marijuana.

4. Staff Recommendation

Staff recommends the approval of an initial moratorium until March 31, 2010 on the commercial growing, dispensing, and processing of medical marijuana within the city to allow Planning Board and City Council an opportunity to direct staff to draft regulations (coordinated by the City Attorney's Office, Community Planning, Environmental Enforcement, Police, Finance, and Building Departments) to effectively regulate commercial medical marijuana operations in the city.

As a part of the work plan, staff recommends:

- a. Research and consideration of the impacts of commercial operations which grow, dispense, and process medical marijuana.

- b. Research and formulation of draft regulations for consideration by Planning Board and City Council that respond to the identified impacts of location; general operational characteristics; separation requirements from schools, places of worship, and parks; hours of operation; security standards; review processes; business licensing processes; and enforcement and building inspection considerations.
- c. Continued monitoring of the state's actions and policies regarding the regulation of medical marijuana as well as how other municipalities both locally and nationally are addressing and regulating medical marijuana establishments.

5. Next Steps

Staff will present the board's feedback and recommendations to the City Council for consideration on November 10, 2009. In the event a moratorium is approved by City Council on November 10, 2009, staff will initiate further research, return to the Board and Council for direction, and then draft potential code amendments regarding businesses that grow, dispense, and process medical marijuana. Draft regulations would be presented to Planning Board and City Council for consideration and approval before the expiration of the moratorium.

Attachments:

- A: Information related to how other local governments in the state are responding to issues surrounding medical marijuana

ATTACHMENT A

Community	Moratorium?	Duration	Current actions
Arvada	No. Council did not approve.	NA	Not allowed as it does not appear on permitted use chart.
Breckenridge	Yes. Now expired.	60 days	Following a moratorium, the town developed an ordinance that regulates the location and operation of medical marijuana dispensaries. Ordinance was adopted Oct. 7, 2009. Efforts to decriminalize marijuana have been approved by voters through a ballot initiative on 11/3/09.
Broomfield	No	NA	None. Considers current federal and local laws adequate in prohibiting medical marijuana.
Colorado Springs	No	NA	City Council issued directive that dispensaries are not permitted in any zoning district and enforcement actions are being taken against any existing dispensaries.
Denver	No	NA	Dispensaries regulated like a retail pharmacy use. No licensing requirements. Cultivation like any agricultural operation. Some council members are proposing stricter licensing requirements.
Federal Heights	Yes. Adopted mid-October.	120 days	Looking into regulations and licensing requirements for dispensaries.
Fort Collins	No	NA	Considers dispensaries retail use. Applicable departments meeting with City Manager to recommend a moratorium. Attorney's office looking into possible length of moratorium.
Golden	Yes. Adopted 10/8	180 days	Waiting on direction from City Council and possible state action.
Lafayette	Yes. Adopted 10/20	Valid until May 15, 2010	Preparing regulations that address possible locations for use, distance requirements, and felony background checks. Waiting for state action.
Longmont	Yes. Adopted 10/20, retroactive to 10/2.	90 days, may extend.	Before moratorium regulated as pharmacies. Looking into creating panel (6-7 members) composed of stakeholders, including local medical marijuana proponents, police, physicians, and opponents to discuss issues. Go to larger focus groups (10-15 participants) afterward.
Louisville	Yes. Adopted 10/20	Valid until May 15,	Looking into regulations similar to liquor licenses. Clarifying definition of

		2010	dispensaries and where they may be located. Waiting for state action.
Northglenn	No.	NA	Medical Marijuana Dispensaries illegal until adoption of new ordinance, which regulates location of the establishments through buffers and is not zone based. Process similar to liquor license with \$2,000 application fee. Involves background check and fingerprinting.
Silverthorne	Yes.	90 days, ends Nov. 10 th .	New ordinance would allow medical marijuana dispensaries to operate as long as they're not near schools, residential neighborhoods and public places. Would be limited to areas already allowing drug stores and pharmacies. Marijuana cultivation in some areas of town would also be allowed under the new provisions.
Summit County	Yes. Adopted 10/27.	120 days	Pending regulations that would be consistent with surrounding towns. Looking at location requirements (should the uses be allowed in mixed-use, commercial areas?) and minimum separation requirements. Proposing to allow cultivation, but prohibit commercial sale at home occupations and within residential areas.
Superior	No	NA	None. Considers current federal and local laws adequate in prohibiting medical marijuana.
Thornton	Yes, but expired.	1.5 months	City Council has considered Medical Marijuana Dispensaries a prohibited use and will reconsider the issue in 2 years.
Westminster	Yes	90 days	Considering regulations to allow, disallow, or allow with conditions.