

Policy for Initial Processing of Appeals of City Staff Decisions

Denying an Application for a License Related to a Medical Marijuana Business

Reason for Policy

Regulating medical marijuana businesses is a new endeavor for the city and presents new and unprecedented questions for city staff. The city's goal is to treat each applicant fairly and to limit the bureaucracy imposed on applicants. This policy addresses the two types of appeals that have arisen and provides a streamlined method for addressing these questions. The city has established a process for an applicant to appeal a denial by the city staff of a license related to medical marijuana businesses to provide due process for any applicant whose application to the city for a license is denied. This policy identifies a method for handling appeals that are outside the scope of the relief that can be awarded through that process and for streamlining some appeals in that process.

The city has received several requests characterized as appeals of a license denial related to a medical marijuana business that do not request appellate relief, but request relief in the form of a change of the city's law. Only the city council acting through legislation can change the city's law. Accordingly, such "appeals" are not appropriate for the city's established quasi-judicial process. The city is establishing this policy to provide a system for recording such requests and including them in the legislative process for future potential changes in the city's ordinances.

In addition, it has become apparent that there are times that judicial appeals could be expedited in cases where the record is complete and the city does not need to submit additional evidence. In such cases the city will consider stipulating to the documents of record. The appellant could then proceed directly to review by the Boulder District Court pursuant to Rule 106, C.R.C.P.¹

Therefore, I adopt the following policy for consideration of requests for review of city staff decisions regarding licenses related to medical marijuana businesses:

¹ All references to "chapter," "section," or "Code" refer to the Boulder Revised Code, 1981, available at <http://www.colocode.com/boulder2/index.htm#main>. All references to "Rule 106" refer to Rule 106(a)(4) of the Colorado Rules of Civil Procedure, available at <http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp>

Process of City Manager Related to Challenges to City Staff Decisions Related to Medical Marijuana Businesses

When an appeal of a denial of a license application is properly submitted to the city manager related to a medical marijuana business pursuant to sections 6-14-5(e) "Application" and 4-1-9(b) "Authority to Deny Issuance of Licenses," the city manager shall determine the appropriate procedure from the following:

- A. When the relief requested is quasi-judicial review of a staff decision that is allegedly inconsistent with a specific provision(s) of the code and evidence or argument is required to properly consider such allegations, the appeal shall be processed as a quasi-judicial proceeding in accordance with the provisions of chapter 1-3 "Quasi-Judicial Hearings."
- B. When the relief requested is quasi-judicial review of a staff decision that is allegedly inconsistent with a specific provision(s) of the code and the decision was made or due process review can be provided based only on documents presented by the applicant to the city, the city manager may identify the documents presented to the city which shall be the record the appellant may use as the final decision of the city, subject to Rule 106 review by the Boulder District Court.
- C. When the relief requested is a change to the applicable law of the city, the city manager shall submit the relief requested in such requests to the city council as part of the staff memorandum presented to the city council when the council next considers revisions to chapter 6-14, and no further action on such request shall be required by city staff. The next revisions to chapter 6-14 are anticipated to be on the council agenda in October or November, 2010.

When documentation is submitted to the city manager characterized as an appeal but not meeting the requirements of the code for an appeal, the city manager may reject such documentation by returning it to the sender with a statement of the grounds on which the manager has determined that the request shall not be processed in accordance with section 4-1-9(b).

This policy shall be in effect until September 30, 2011. Formalized this 31st day of August, 2010.



Jane S. Brautigam, City Manager