

## **MEMORANDUM**

TO: City Council  
FROM: Management Staff – Marijuana Code Committee  
DATE: April 21, 2015  
RE: Marijuana Code Overview

### ***Introduction***

Development of local marijuana regulations to date has been premised on following:

- directives associated with state statutes and accompanying regulations established for the industry;
- obtaining input from the community regarding potential directives; and,
- determining relevant local oversight provisions directed at protecting the community's health, safety and welfare.

The public input process has shown there is a dichotomy of opinion in the community. It is anticipated that the final local marijuana regulations will establish a reasonable balance between diverse community opinions and ensuring that health, safety and welfare factors are adequately addressed.

Regulatory oversight of the new marijuana business market requires amendments to the City Sales and Use Tax Code (Chapter 3.10), the Business Regulations (Chapter 8.50), and the City's adopted International Codes (Chapter 14, Building, Mechanical, and Fire Codes) of the *City of Gunnison Municipal Code* (GMC). Additionally, the *City of Gunnison Land Development Code (LDC)* will be amended to address a variety of use regulations. This memorandum summarizes the general ordinance structure and content provisions that will be incorporated into the draft ordinance.

### **Sales Tax Distribution**

Passage of the sales tax question requires amendments to GMC, Section 3.10.060, Schedule of Sales Tax Distribution of Receipts. A five percent sales tax on related products (medical and retail) will be established by an amendment to this Section of the GMC. Excise tax will be applied to Retail marijuana and marijuana products exported from the city limits.

### **Business Regulations**

Business regulations address a variety of topics including, but not limited to, license and application fee requirements; application material contents; review process and procedures; renewal, ownership transfers and change of location; and suspension revocation provisions.

A subject requiring Council direction is associated with the remittance of fees if an application is withdrawn. Specifically, if an application is withdrawn the staff recommends that the application fees will not be refunded. Does the Council wish to also refund the collected *license fee* or should it also be retained by the City?

Application content and the licensing process will focus on the business functions. Business licensing application materials deemphasize operational details, but they mandate compliance with adopted building and *LDC*. That is to say, licenses will be considered without a great amount of facility and operational related details, but the license will not be subject to issuance until the building, mechanical, and fire code provisions are adequate and zoning compliance requirements are fulfilled.

Suspension and revocation provisions in the Business Regulations will consist of a list of mandates that, if not fulfilled, will constitute a case for revocation. Topics are related to professional business conduct; building code compliance; pollutant discharge into the City's sewer facilities; equipment standards; industrial hygiene provisions; and, oversight mandates for hazardous and toxic materials.

### **Building, Mechanical, and Fire Codes**

The control of odor is necessary to minimize nuisances. Draft regulations for all marijuana establishments require that odors be removed from the facility in a manner that does not constitute a nuisance to adjacent occupants, structures and properties. Fulfilling the odor mandate in new buildings will not be a major issue, but existing buildings will be required to retro-fit mechanical systems (heating/air conditioning). The odor nuisance provision will allow marijuana establishments to operate in multi-tenant facilities.

Marijuana cultivation establishments and marijuana product manufacturing establishments present unique issues that must be addressed by amendments to the Building Code. Issues include, but are not limited to certification standards for equipment used in manufacturing and the use of flammable materials and compressed gas in cultivation or product manufacturing. Staff proposes the prohibition of compressed gases, and flammable and combustible liquids for cultivation and production. However, an exception will permit the use of Carbon Dioxide gas if certain life-safety features and provisions are in place. Specifically, if carbon dioxide gas levels exceed 5,000 parts per million an alarm system shall activate and the CO<sub>2</sub> equipment will shut down.

Due to the fact that this is an emerging industry, the equipment used in the cultivation and product manufacturing operations has not been tested by registered safety institutions that address the safety of machinery design. Typically manufacturing equipment is tested by institutions such as Underwriters Laboratories, the International Code Council or other similar entities. Because manufacturing operations are an “emerging industry” the related equipment specification have not been established, tested and approved by industrial safety institutions. The proposed code will require all equipment possess industrial safety certifications or be stamped and approved by a licensed engineer.

Food safety production standards will be addressed by the City marijuana code standards. Proposed local standards will require that marijuana product manufacturing establishments be inspected and approved by an industrial hygienist certified by the American Board of Industrial Hygiene. Design and operation protocol of the said marijuana manufacturing and production facilities will be required to comply with food safety mandates established by the State of Colorado. Annual inspection by a certified industrial hygienist is also proposed in the marijuana code.

### ***Land Development Code (LDC)***

Land use regulation amendments will apply to Sections 2 and 3 of the *LDC*. The Principal Use Table (Table 2-3) will be amended to address zone districts where grow operations, manufacturing, testing and retail sales may occur. Section 3 of the *LDC*, titled Specific Use Regulations, will be amended with the addition of specific standards, protocols and procedures deemed necessary for this new industry. These additional regulatory provisions apply to topics including, but not limited to:

- Zoning compliance: *no marijuana establishments in the CBD or B1 and cultivation and product manufacturing is limited to the Industrial District;*
- Grow operations and wastewater discharge: *must meet local and state discharge standards;*
- Signage standards: *comply with city sign standards and prohibit certain terms and images;*
- Industrial hygiene standards: *directed at filling oversight provisions not presently being met by the State of Colorado;*
- Hours of operation: *8:00am-7:00pm, seven days per week*

### **Land Use Buffers**

The Colorado Revised Statutes require Medical marijuana establishments be separated at least 1,000 feet from public or private pre-schools, elementary, middle, junior high, high schools or institutions of higher education. Many other communities have established additional buffers from churches, rehabilitation

facilities, parks and other similar land uses. Based on comments from the public input meetings and consideration of public interest, the City staff proposes 1,000 foot buffers from schools, pre-schools, and WSCU and that licensed marijuana establishments not be located adjacent to the any residential district zones. The draft buffer map is attached.

### Conclusion

Crafting regulations that follow directives associated with state statutes and accompanying regulations established for the industry is fairly straight forward, but ensuring the directives are sensible and protect the community's health, safety and welfare is the intended target. Staff believes that the draft code will fulfill these needs through a balanced regulatory structure.

The Planning and Zoning Commission is scheduled to conduct the *LDC* Text Amendment hearing on May 13<sup>th</sup>. Staff anticipates that the P&Z recommendation will be voted on that evening. The Council is scheduled to conduct a public hearing on the proposed marijuana ordinance on May 26<sup>th</sup>. The first and second ordinance reading are anticipated to occur in June.

