

## **MEMORANDUM**

TO: City Council  
FROM: Management Staff – Marijuana Code Committee  
DATE: February 24, 2015  
RE: Marijuana Code Overview

### ***Introduction***

On November 4, 2014, the City of Gunnison put the question to registered voters of the city, whether to allow medical marijuana establishments and/or retail marijuana establishments, and whether the sale of related products should be subject to taxation. Since the approval of the ballot question, City staff has started developing an ordinance to address regulatory provisions for marijuana establishments. 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) of the *City of Gunnison Municipal Code* (GMC), and the Building Code (GMC, Chapter 14.10). Additionally, the *City of Gunnison Land Development Code* (LDC) will be amended to address land use regulations. This memorandum summarizes the general ordinance structure; defines specific statutory and legal mandates; outlines land use regulation amendments; and proposed Building Code changes.

### ***Ordinance Structure***

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.

The City's business regulations, which are codified in Title 8 of the GMC, will be amended to address the licensing provisions for growing, product manufacturing, and retail sales of medical and retail marijuana establishments. Amendments to this section will address application fees; application contents; procedural functions; and review standards.

Land use regulation amendments needed for the marijuana industry will necessitate changes to Sections 2 and 3 of the LDC. Specifically, 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.

Building Codes amendments are considered necessary for the safe operation of certain related marijuana establishments. Marijuana grow operations and marijuana manufacturing operations present unique issues that must be addressed by amendments to the Building Code. The proposed amendments will address specific life-safety factors associated with activities in these facilities.

### ***Statutory and Legal Mandates***

The Colorado Revised Statutes include the Colorado Medical Marijuana Code (C.R.S. §12-43.3-101 et seq.) and the Colorado Retail Marijuana Code, (C.R.S. §12-43.4-101 et seq.). These statutory mandates are promulgated by the Colorado Department of Revenue, Marijuana Enforcement Division (MED), who establish under the Code of Colorado Regulations (CCR's), specific protocols for licensing, tracking, transporting, manufacturing, labeling, packing, and enforcing Medical and Retail marijuana industries in Colorado.

As a Home Rule Municipality, the City of Gunnison has broad discretionary authorities exceeding state statutes, which may be applied to regulating retail and medical marijuana industries. Business regulatory components of the City's regulations will, for the most part, follow state CCR procedures. It is anticipated that licensing such businesses will be very similar to the review of a liquor license. However,

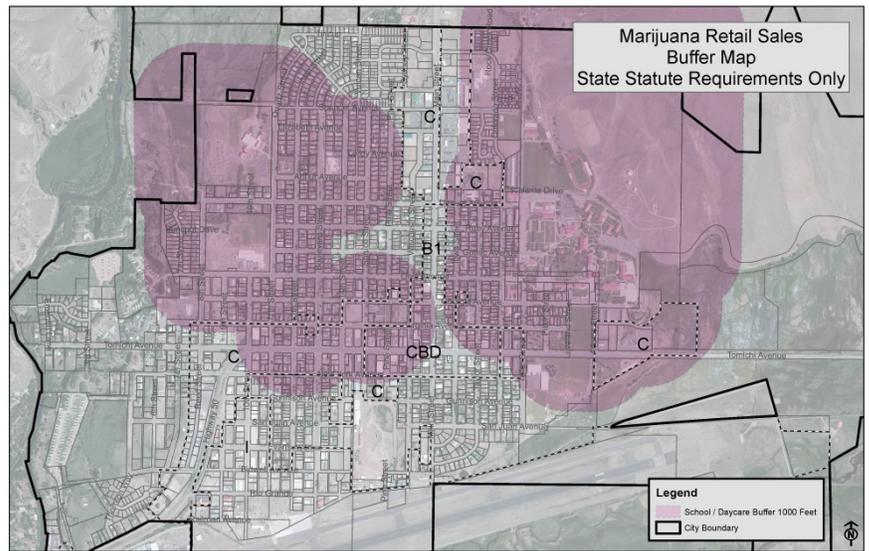
land use code and building regulations require a higher level of regulatory oversight to address health, safety and general welfare factors that are unique to the industry. These additional regulatory provisions may apply to topics including, but not limited to:

- Grow operations and wastewater discharge;
- Manufacturing facilities equipment design standards;
- Signage standards;
- Land use buffers – residential and park buffers; and
- Use in public places.

**Land Use Regulations**

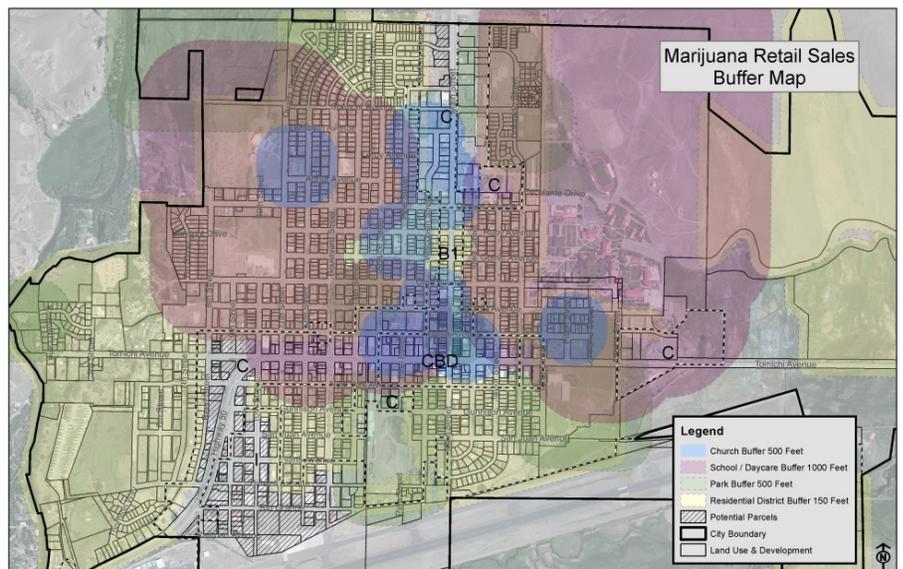
The Colorado Revised Statutes require Medical marijuana establishments be separated at least 1,000 from public or private pre-schools, elementary, middle, junior high, high schools or institutions of higher education. Many other communities have established additional buffers from churches, rehabilitation facilities, parks and other similar land uses. As noted in the adjacent map, a very large portion of the city land area is excluded for the related uses, based on the Revised State Statutes buffer separation mandates from schools and the Western State campus.

The staff believes there is merit for considering additional buffers from residential zone districts, places of worship (churches, synagogues, etc.) and parks. The map below depicts separations using a 150 foot residential buffer, 500 foot religious facility buffer, and 500 foot park buffer. The Planning and Zoning Commission discussed the buffer issue and support the implementation of the proposed additional buffer standards.



Amendments to the Special Use Regulations (Section 3) of the LDC will be necessary. Section 3 will likely address a rather wide-array of regulations pertaining to medical and retail marijuana establishments. Signage, lighting, security, size, hours of operation and other factors will be addressed in Section 3 of the LDC.

The LDC Land Use Table 2-3 defines where certain uses may or may not be allowed within the specific zoning districts. The



P&Z addressed what type of marijuana establishments would be appropriate for certain zone districts. They determined that grow operations, product manufacturing, and testing laboratories should be Permitted Uses in the Industrial District. P&Z also determined that retail marijuana establishments be a Permitted Use in non-buffered Commercial Districts and be Conditionally allowed in the Industrial District. Presently all retail uses in the Industrial District are subject to Conditional review and the P&Z believes this should be extended to marijuana retail establishments.

Another matter to be addressed is whether or not to limit the number of medical and retail marijuana establishments allowed in the community. In general, large municipalities permitting these uses do not limit the number of business, while many smaller communities have limited the number of medical and retail marijuana establishments that may be licensed to operate. If additional buffers are approved the Industrial District land area could be inundated with marijuana related uses – this will affect land values and could displace other uses and activities that are intended to be located in this district. Limiting the number of marijuana establishments would help to protect the existing uses in the Industrial District. The P&Z determined that the number of licensed marijuana establishments should be limited.

### ***Building Code Amendment Considerations***

Regulations addressing Building Codes factors are also necessary. Issues may include, but not be limited to heating and ventilation systems; certification standards for equipment used in manufacturing; wastewater quality standards (nutrients and pesticide discharge levels); wall separation design to prevent odors from migrating through party walls separating occupant types; and other similar details.

Large scale marijuana grow operations are often conducted in very sophisticated facilities with special environmental controls. Examples include greenhouse facilities that inject either carbon dioxide or sulfur dioxide gases into the facilities – both gases present potential life-safety issues. Carbon dioxide (CO<sub>2</sub>) injected into a closed facility displaces oxygen and can be very dangerous to human health. Sulfur dioxide (SO<sub>2</sub>) is also harmful to humans – when inhaled it is transformed into sulfuric acid when it enters the lungs. City staff proposes Building Code amendments to **prohibit** the use of SO<sub>2</sub> gas injection in any industrial related facility used for growing plants. Additionally, the staff proposes Building Code regulations requiring grow facilities to use CO<sub>2</sub> gas monitoring equipment that will automatically shutoff CO<sub>2</sub> gas injection when oxygen is depleted to a potentially threatening level.

Building Code amendments will address specific provisions associated with the marijuana manufacturing (and infused product manufacture) facilities. Presently, manufacturing facilities often use distilling processes to convert marijuana into oils and other similar products. Due to the fact that this is an emerging industry, the equipment used in the distilling process has not been tested by registered safety institutions that address the safety of machinery design. Typically manufacturing equipment is tested by institutions such as United Laboratories, the International Code Council or other similar entities. Because manufacturing operations are an “emerging industry” and related equipment specification have not been established, tested and approved by industrial safety institutions. City staff recommends that all equipment related to the distillation operations either be safety tested and certified or the equipment be designed and constructed be approved by an engineer licensed to practice in the state of Colorado. Staff also recommends that manufacturing facilities have commercial kitchen facilities that will be approved by the Colorado Department of Public Health and Environment.

Odors emitted from Marijuana establishments will be a significant regulatory problem unless certain standards are established. Two significant issues are associated to the odor factor. First, a facility that has more than one occupation type must be designed with heating and ventilation equipment that prevents cross-over air circulation. Additionally restricting marijuana establishments from co-occupying a facility with an unrelated use would be a prudent act in order to eliminate potential conflicts. Specifically, the staff recommends the prohibition of non-related occupations when a marijuana establishment is located in

the same structure or on the same lot. While this prohibition would preclude marijuana establishments in buildings with party walls, it could significantly reduce the potential number of nuisance complaints that are anticipated. Additionally, if two different marijuana establishments occupy the same facility, the staff recommends that a closed heating and ventilation system be available for each occupant to eliminate the potential for mixing of the air, gas and related odors.

Staff also recommends that all ventilation/exhaust systems on marijuana establishments be equipped with special exhaust ventilation filters. Modern filtering technologies can be used to reduce odor emission from the related facilities, by using active carbon filtration, negative ion generation, and other similar applications.

### ***Conclusion***

The Council is asked to consider the following topic questions and provide input for developing the ordinance.

1. Should marijuana establishments be regulated as a Conditional or Permitted use and in which zone districts should they be located? As previously noted, the Planning and Zoning Commission determined marijuana establishments should generally be Permitted Uses, but they recommend limiting uses to specific districts. Based on the P&Z position, many of the land use and building code standards will require a city staff that is capable of addressing technical mandates Building Code and land use standards that would apply to specific marijuana establishments.
2. Should there be additional buffers established in addition to the statutory buffer separations? The P&Z support buffers to include a 150 foot buffer from residential districts and a 500 foot buffer from any place of worship and public parks.
3. How many marijuana licenses should be permitted in the city limits? The P&Z determined that the number of related licenses should be limited. The P&Z discussed the possibility of limiting the licenses to two for each type of establishment. Additional discussion regarding this matter will be necessary.