



Land Use

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Docket DC-16-0002: Proposed Boulder County Land Use Code Amendments to Article 4 and Article 18

Request: Proposed Boulder County Land Use Code Amendments to Article 4 and Article 18 to address the cultivation and processing of marijuana as a Residential Accessory Use (Land Use Staff Planner: Bryan Harding)

Dear Stakeholder/Interested Party,

On January 26, 2016, the Board of County Commissioners authorized Land Use staff to pursue text amendments to the Boulder County Land Use Code to address the cultivation and processing of marijuana as a Residential Accessory Use.

The state of Colorado's legalization of marijuana has presented numerous land use challenges as the new laws have been implemented. The County recognized the votes to legalize marijuana and has undertaken sensible regulations to address the impacts while allowing the various associated uses. Through the evolution of these uses it has become evident there are certain aspects of the County's regulations which do not fully address the impacts and potential hazards present. In addition, the land use regulations may permit more than what is allowed under state laws thus creating a situation where the cultivations/grows are for activities not permitted under state law. In regard to this, the County has received several complaints about the residential cultivation and processing of marijuana. Complaints raise concerns about odors, safety concerns from fire, explosions and potential exposure to hazardous materials.

The current Land Use Code allows personal cultivation and caregiver cultivation as Accessory uses and limits the area for the activity to no more than 300 square feet. Under that regulation it could be possible to grow more than 100 plants. The provisions also prohibit the use of flammable gases in any extraction. Staff is proposing to review the adequacy of the current regulations and draft amendments which then address any shortcomings. The goal is to have a clear regulatory framework which protects the safety of County residents and meet the intent of Accessory Use regulations. Land Use also wishes to ensure that the home marijuana uses under the code are roughly comparable to the regulations of other jurisdictions within the County to provide for more uniformity in enforcement and to avoid forum shopping by marijuana growers.

A draft of the proposed text amendments is attached to this letter for your review. You may also view the proposed draft text amendments and future revisions in our office or online at: <http://www.bouldercounty.org/property/build/pages/lucodeupdatedc160002.aspx>

This docket review process will include a public hearing before the Boulder County Planning Commission, tentatively scheduled for March 16, 2016, and a public hearing before the Boulder County Board of County Commissioners, tentatively scheduled for April 5, 2016 at 2:00pm. Public comments will be taken at both hearings. Confirmation of hearing dates and times will be published online at the link above and in local newspapers.

The Land Use staff and County Commissioners value comments from individuals and referral agencies. Please check the appropriate response below or send a letter or email with your comments. All comments will be made part of the public record. If you have any questions regarding this docket, please contact me at (303) 441-3930 or bharding@bouldercounty.org.

Please return responses to the above address by **March 1, 2016**. Late responses will be reviewed as the process permits.

_____ We have reviewed the proposal and have no conflicts.

_____ Letter is enclosed.

Signed _____ PRINTED Name _____

Agency or Address _____

Docket DC-16-0002: Proposed Boulder County Land Use Code Amendments to Article 4 and Article 18 to address the cultivation and processing of marijuana as a Residential Accessory Use

Land Use staff's proposed changes to Boulder County Land Use Code marijuana regulations –
Updated February 12, 2016:

Note to reader: The Boulder County Land Use Code is proposed to be amended by deleting the language stricken and adding the language underlined to read as follows:

Accessory Uses

Article 4-516(Q) - Home Occupation

1. Definition: A home occupation shall mean an accessory use consisting of a vocational activity conducted inside a dwelling unit or its accessory structures, and used only by the individuals who reside therein and one employee, provided that the home occupation:
 - a. does not result in noise or vibration, light, odor, dust, smoke, particulate, or other air pollution noticeable at or beyond the property line,
 - b. includes only the incidental sale of stocks, supplies, or products,
 - c. is clearly subordinate to the use of the ~~lot~~ parcel for dwelling purposes and does not change the character of the ~~lot~~ parcel,
 - d. does not include the outside storage of goods, materials, or equipment,
 - e. has signage limited to a non-illuminated identification sign of two square feet or less in size,
 - f. does not exceed one-half the total floor area of the dwelling including activities carried out in an accessory structure(s), with the exception of child care which may exceed this limit,
 - g. does not produce traffic volumes exceeding that produced by the dwelling unit by more than 16 average daily trips or a maximum of 30 trips during any 24 hour period,
 - h. does not include nursing homes, restaurants, vehicle repair businesses, ~~or~~ boarding houses, or marijuana establishments, and
 - i. ~~Does not include operations conducted within a dwelling unit that grow marijuana, or prepare marijuana-infused products, for sale to Marijuana Establishments or other marijuana-related businesses are Marijuana Establishments.~~
2. Districts Permitted: By right in all districts
3. Parking Requirements: One off-street space
4. Loading Requirements: None
5. Additional Provisions:
 - a. In subdivisions, no more than one vehicle associated with the use, registered as a passenger vehicle, light truck, recreational truck, or farm truck may be parked outside on the property.
 - b. The number or type of registration for vehicles associated with the use is not limited on properties located outside subdivisions.
 - c. ~~Medical marijuana operations in dwelling units shall be confined to residents growing their own medical marijuana or preparing their own infused products, and to individual~~

- primary caregivers growing medical marijuana or preparing infused products for their registered patients, as authorized under state medical marijuana law.
- ~~d. Medical marijuana caregiver activities cannot exceed 300 sq. ft. including areas carried out in an accessory structure.~~
- ~~e. Use of compressed, flammable gas as a solvent in the extraction of THC or other cannabinoids is prohibited.~~
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Accessory Uses

Article 4-516(R) – ~~Personal Cultivation~~ Residential Marijuana Processing or Cultivation and Marijuana Product Manufacturing

1. Definition: Cultivation of marijuana or manufacture of marijuana products/by-products in a dwelling unit or accessory structure, not for the purpose of sale or profit, primarily by and for the ~~people~~ individuals living on the parcel. All marijuana plants on the parcel must be grown by an individual whose primary residence is on the parcel.
2. Districts permitted: By right in all districts.
3. Parking Requirements: none
4. Loading Requirements: none
5. Extraction of Marijuana Concentrate:
 - a. Use of compressed, flammable gas as a solvent in the extraction of THC or other cannabinoids is prohibited.
 - b. Alcohol/ethanol extraction is permitted provided it is done without application of heat from a fuel-fired or electrified source and uses not more than 16 ounces of alcohol or ethanol during the extraction process.
 - c. Food-based extraction is permitted including production of marijuana concentrate by extracting cannabinoids from marijuana through the use of propylene, glycol, glycerin, butter, olive oil, or other typical cooking fats. Except as otherwise provided in paragraph ii. of this section, use of flammable liquids is prohibited.
 - d. Water-based extraction is permitted including production of marijuana concentrate by extracting cannabinoids from marijuana through the use of only water, ice or dry ice.
6. Additional provisions:
 - ~~a. Marijuana cultivation for personal use cannot exceed 300 sq. ft. including areas carried out in an accessory structure~~
No more than six (6) plants may be grown per parcel, regardless of the number of occupants.
 - ~~b. Marijuana cultivation and marijuana product manufacturing must be accessory to a residential use~~
 - ~~c. Use of compressed, flammable gas as a solvent in the extraction of THC or other cannabinoids is prohibited.~~
 - d. The use must not result in noise or vibration, light, odor, dust, smoke, particulate or other air pollution noticeable at or beyond the property line,

- e. This use is limited as Accessory to Single Family Residential by a lawful occupant of the dwelling.
 - f. Supplemental carbon dioxide may not be used.
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Retail and Personal Service Uses

Article 4-512(I) Marijuana Establishment

1. Definition: ~~A licensed business or a business with a pending license that grows, sells, and/or distributes medical and/or retail marijuana~~ Any location where more than six (6) plants are cultivated, produced, tested or distributed as authorized pursuant to Section 14 and Section 16 of Article XVIII of the Colorado Constitution and other applicable state law. This use includes the following:
 - a. Marijuana store
 - b. Marijuana-infused products manufacturing;
 - c. Optional premises cultivation or retail marijuana cultivation facility;
 - d. Marijuana testing and/or research facility;
 - e. Primary caregiver;
 - f. Personal cultivation.
2. Districts Permitted: By right in T, B, C, LI, and GI.
3. Parking Requirements:
 - a. One space per 200 square feet of floor area used for office, sales, or personal service operations.
 - b. One space per 1,000 square feet of floor area used for used for cultivating and research and/or testing facilities.
4. Loading requirements: One loading space for 10,000 or more square feet of floor area.
5. Additional Provisions:
 - a. This use must obtain and maintain all necessary state and local permits and licenses. Regardless of when they are established, businesses operating for the purpose of cultivation, manufacture, or sale of marijuana or marijuana-infused products, as defined in 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. (“the Codes”), are and will be subject to the provisions and limitations stated in those Codes. These provisions and limitations include those in the legislation, and any state and County requirements promulgated under the legislation. Such businesses or uses, even if allowed under this Section 4-512.I or prior provisions of this Code, are subject to termination if they cannot meet the requirements of, or legally operate pursuant to the Codes.
 - b. This use may include the accessory sale of products containing marijuana to the extent authorized by applicable state law.
 - c. One single-family dwelling to house the owner or manager of the Marijuana Establishment and his or her family will be considered customary and incidental as part of this use, to the extent authorized by state law.

- d. Except in the LI and GI Zoning Districts, this use shall not be located within 500 feet of another Marijuana Establishment (including a Marijuana Establishment in the unincorporated County or a substantially similar facility in an adjacent municipality), as measured from the closest point of the subject parcel lines.
 - e. A Marijuana Store shall not be located within 1,000 feet of an alcohol or drug treatment facility, a licensed child care facility, or an educational facility with students below the college grade level (including facilities in the unincorporated County or substantially similar facilities in an adjacent municipality), as measured from the closest point of the subject parcel lines.
 - f. Marijuana-infused products manufacturing, optional premises cultivation, and marijuana testing and/or research facilities, are not subject to the above setback requirement in Subsection e., provided there is not an associated marijuana store on the same parcel.
 - ~~g. A change of use from an existing Retail or Personal Facility Use under Art. 4-512.M. of this Code, or from an existing Professional Office Use under Art. 4-509.A. of this Code, to a Marijuana Establishment allowed under this Article 4-512.I, shall not require Site Plan Review approval under Article 4-802.A. of this Code.~~
 - h. Marijuana establishments shall not have a drive-through service.
 - i. Personal cultivation and Primary Caregiver cultivation facilities are limited to no more than 99 plants
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Article 18 - Definitions

Article 18-185B – Primary Caregiver

A person who meets the definition of primary caregiver under article XVIII, section 14(1)(f) of the Colorado constitution and applicable law.

Article 18-185C - Primary Residence

The place that a person, by custom and practice, makes his or her principal domicile and address and to which the person intends to return, following any temporary absence, such as vacation. Residence is evidenced by actual daily physical presence, use, and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and consumption of meals, regular mail delivery, vehicle and voter registration, or credit, water, and utility billing. A person shall have only one primary residence.

Article 18-150C – Flammable Liquid

Liquid that has a flash point below 100 degrees Fahrenheit and includes all forms of alcohol and ethanol.