

COPY

RESOLUTION 2016-75

A resolution approving Boulder County Land Use 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)

Recitals

A. The Board of County Commissioners of Boulder County (“the Board”) is authorized to amend the text of County’s Zoning Regulations according to the procedures in the regulations and C.R.S. § 30-28-112, -116 and -133.

B. Under other statutory authority, the Board is empowered to adopt regulations related to the control of land use, including but not limited to Article 65.1 of Title 24 (Areas and Activities of State Interest); Articles 67 and 68 of Title 24 (Planned Unit Developments and Vested Rights); Article 20 of Title 29 (Local Land Use Enabling Act); Articles 11 and 15 of Title 30 (County Powers and Police Power); Article 1 of Title 32 (Special District Control); and Article 2 of Title 43 (County Highways), C.R.S.

C. By Resolution 94-185, adopted October 18, 1994, the Board approved a unified Boulder County Land Use Code (“the Land Use Code”), which the Board has amended on subsequent occasions.

D. In the present Docket, DC-16-0002 (the “Docket”), authorized by the Board at a public business meeting on January 26, 2016, Boulder County Land Use staff proposed text amendments to Article 4-516(Q), Article 4-516(R), Article 4-512(I), Article 4-802, and Article 18, as set forth in the Boulder County Land Use Department’s memorandum and recommendation dated June 28, 2016 with its attachments (the “Staff Recommendation”)

E. The Boulder County Planning Commission (“the Planning Commission”) held a duly noticed public hearing on the Proposed Amendments on March 16, 2016, which was tabled to April 20, 2016, and tabled again to May 18, 2016. The Planning Commission recommended approval of the Proposed Amendments, and certified the Docket for action to the Board.

F. On June 28, 2016, the Board held a duly noticed public hearing on the Docket and considered the Staff Recommendation, documents and testimony presented by the County Land Use Department staff, testimony of the Marijuana Authority, and the testimony of numerous members of the public (the “Public Hearing”).

G. Based on the Public Hearing, the Board finds that the Proposed Amendments included in

Exhibit A meet the criteria for text amendments contained in Article 16 of the Land Use Code, in that the existing text is in need of amendment; the Proposed Amendments are not contrary to the intent and purpose of the Land Use Code; and the Proposed Amendments are in accordance with the Boulder County Comprehensive Plan.

Therefore, the Board resolves:

1. The Proposed Amendments in Exhibit A are approved for incorporation into the Land Use Code, effective June 28, 2016.

2. Under §30-28-125, C.R.S., the Board authorizes the Clerk to the Board to transmit this Resolution, with its Exhibit A, to the County Clerk and Recorder for filing and appropriate indexing. This transmittal should state recording Reference No. **2735571**, the recording of the Boulder County Land Use Code on November 4, 2005, which this transmittal amends.

A motion to approve the Proposed Amendments, was made at the Public Hearing by Commissioner Domenico, seconded by Commissioner Gardner, and passed by a 3-0 vote.

ADOPTED this 12 day of July, 2016 *nunc pro tunc* the 28th day of June, 2016.

**BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:**



(Excused)
Elise Jones, Chair

Cindy Domenico
Cindy Domenico, Vice Chair

Deb Gardner
Deb Gardner, Commissioner

ATTEST:

Cecilia S. Lacey
Clerk to the Board

EXHIBIT A

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 for dwelling purposes and does not change the character of the lot,*
 - 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.*
 - e. ~~*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.*~~

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

1. *Definition: Cultivation, production, or processing of marijuana or manufacture of marijuana products/by-products, or as authorized pursuant to Section 14 and Section 16 of Article XVIII of the Colorado Constitution and other applicable state law, in a legal dwelling unit or accessory structure, not for the purpose of sale or profit, primarily by and for the people individuals living*

on the parcel. A maximum of six (6) plants may be grown per legal dwelling unit, regardless of the number of occupants. Processing of plants is limited only to those plants grown 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 heat source an open flame or open heat source and uses not more than 16 ounces 375 ml 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 cooking fats or oils.
 - 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~~
 - 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.~~
 - a. Residential Marijuana Processing and Cultivation must not result in noise or vibration, light, odor, dust, smoke, particulate or other air pollution noticeable at or beyond the property line or shared dwelling unit wall.
 - b. Supplemental carbon dioxide and/or ozone is prohibited.
 - c. Marijuana plants shall not be cultivated, produced processed or possessed in the common areas of a multi-family or attached residential development.

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 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.~~
 - c. 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 or county), as measured from the closest point of the subject parcel lines. This prohibition shall not prevent a marijuana store, marijuana-infused products manufacturing, optional premises cultivation, retail marijuana cultivation facility, or marijuana testing and/or research facility from locating within 500 feet of a primary caregiver or personal cultivation.
 - d. 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 or county), as measured from the closest point of the subject parcel lines.
 - e. 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.
 - ~~f. 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.~~
 - f. Marijuana establishments shall not have a drive-through service.
 - g. Personal cultivation and Primary Caregiver cultivation facilities are limited to no more than 99 plants.

4-802 Applicability and Scope of the Site Plan Review Process for Development

A. Site Plan Review shall be required for (unless not required or waived pursuant to sections B and C below):

- 1. Any development requiring a building permit on vacant parcels in unincorporated Boulder County.*
- 2. Any increase in residential floor area which results in a total residential floor area greater than 125% of the median residential floor area for the defined neighborhood in which the subject parcel is located. In determining if the proposed development is greater than 125% of the residential median floor area, any demolition and rebuilding of any existing residential structure or any portions thereof, shall be counted toward the threshold.*
- 3. Any cumulative increase in floor area of more than 1,000 square feet on a parcel over that existing as of September 8, 1998.
 - a. In calculating this 1,000 square foot threshold, any demolition and rebuilding of any existing structure or any portions thereof, shall be counted toward the threshold.*
 - b. Any floor area not legally existing as of September 8, 1998 shall be counted toward the threshold.*
 - c. Applies to all principal and accessory structure(s).**
- 4. New structures of any size requiring a building permit when the site is located within a Natural Landmark or Natural Area as described in the Environmental Resources Element of the Comprehensive Plan and shown on the Zoning District Maps of Boulder County.*
- 5. New structures 500 square feet or more in the 250' buffer associated with a Natural Landmark or Natural Area, as described in the Environmental Resources Element of the Comprehensive Plan and shown on the Zoning District Maps of Boulder County.*
- 6. New structures or additions to existing structures of any size on property over which a conservation easement has been granted.*
- 7. Development occurring in a Rural Community District as described in the regulations for that District.*
- 8. Any development or earthwork requiring a floodplain development permit.*
- 9. Any grading permit for over 50 cubic yards of earthwork (including grading associated with an access permit).*
- 10. A change of use of a parcel, ~~except to residential, or except from an existing Retail or Personal Service Facility under Article 4-512.M. of this Code or from an existing Professional Office under Article 4-509.A. of this Code to a Marijuana Establishment under Article 4-512. of this Code.~~*
- 11. A commercial telecommunications facility utilizing an existing structure and meeting the height requirements of the district in which the facility is located.*
- 12. A small wind-powered energy system.*
- 13. A small solar energy system as a principal use.*
- 14. Any proposal which is eligible to be waived from Site Plan Review, but for which a waiver was not granted.*

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.