



Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930 • Fax: 303.441.4856
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • www.bouldercounty.org

BOULDER COUNTY BOARD OF COUNTY COMMISSIONERS PUBLIC HEARING

July 29, 2021 at 1:00 PM.

Hearing to be Held Virtually due to COVID-19

PUBLIC HEARING with PUBLIC TESTIMONY

Docket DC-20-0001: Text Amendments to Marijuana Regulations

Description: Text Amendments to Article 4 (Zoning) and any companion changes to the Boulder County Land Use Code related to marijuana to clarify existing code language and align the Code with State statutes.

Staff: Molly Marcucilli, Planner I; Hannah Hippely, Long Range Planning Manager

Action Requested by Board of County Commissioners: Approval of Docket DC-20-0001

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INTRODUCTION

Since the legalization of medical marijuana in Colorado in 2000, and later recreational marijuana in 2012, the marijuana industry in Colorado has experienced substantial growth. Boulder County enacted its first set of medical marijuana regulations in 2010. In a 2014 update to the Boulder County Land Use Code (the “Code”), recreational marijuana was also included. Under this update, medical and recreational marijuana uses were combined under the category Marijuana Establishment (4-512.I). In 2016, additional updates were made to address the cultivation and processing of marijuana as an Accessory Use: Residential Marijuana Processing and Cultivation (4-516.R). As regulations at the state level have continued to evolve, Boulder County has updated the Code to address these

changes to ensure local regulations are up to date with state regulations, and that marijuana is regulated in a manner that serves both the industry and the general public.

The impetus for this Code update was a change in 2017 to Colorado's state regulations regarding marijuana. In addition to reviewing the Code's alignment with the state's changes, staff used this as an opportunity to clarify existing Code language and to engage with industry representatives, the community, and staff, to identify other potential issues that needed to be addressed. On January 28, 2020, the Board of County Commissioners (BOCC) authorized Community Planning & Permitting (CPP) staff to pursue text amendments to Articles 4 (Zoning) and 18 (Definitions) of the Code. Staff has been working on this update since the authorization, and the draft regulations presented in this staff recommendation are the result of these efforts.

OBJECTIVES AND SCOPE

The main objectives of the proposed text amendments are to clarify existing Code language that has been identified as ambiguous as well as add language to align the Code with recent changes to the State of Colorado marijuana statutes and regulations. The changes to state statutes and regulations along with staff analysis of the changes are summarized below.

Security Requirements

In 2017 (implemented in 2018), the Colorado Code of Regulations changed regarding security at properties manufacturing or growing marijuana. The changes require these facilities to install fencing and lighting. However, marijuana establishments may apply for a waiver, which would exempt them from these requirements. The requirements diverge significantly from the Code and do not align with the County goals related to the preservation of rural character. Staff therefore determined that an update to address this change is not consistent with the Comprehensive Plan and Code intent.

Hospitality Establishments

In 2019, the State of Colorado authorized hospitality establishments, which are locations in which medical and retail marijuana may be consumed on site. Subject to local approval, retail food establishments may apply for a marijuana hospitality establishment license. The updated State regulations provide that hospitality establishments may only operate in local jurisdictions that have adopted an ordinance or resolution authorizing said operation within the jurisdiction. Boulder County has not specifically authorized hospitality establishments as is required for these to be permitted. Until such time that these are specifically authorized, the Code must make clear that they are not permitted. Therefore, staff proposes to update the Code to indicate that Membership Clubs, restaurants (retail food establishments), and Eating or Drinking Places, with and without drive-through service, as defined in the Code, are not eligible for this use.

Delivery

In January 2021, marijuana delivery was approved at the state level, and local governments can choose to opt-in. The County has not chosen to opt-in. Since marijuana delivery does not have substantially different land use impacts than other types of delivery (pizza, medical, etc.) which the Code does not regulate, staff found no reason for the Code to regulate marijuana delivery differently than other types of delivery. Licensing of delivery falls under the purview of the County's licensing ordinance and could be further regulated under an amendment to that ordinance should the County choose to opt-in. No change to the Code or the ordinance is proposed at this time.

Statute Citations

The location and structure of the state statutes has changed, so staff proposes to update the Code to accurately reference the updated statutory citations.

Miscellaneous

The following additional changes to state legislation related to marijuana have been identified; however, staff has determined these do not require action by this update:

- Emergency rule in effect during COVID-19, which allows medical and retail marijuana establishments to accept orders over the phone and online, as well as provide curbside pick-up;
- Hemp can now be sold at dispensaries; and
- Out of state capital investments are now allowed.

Staff met internally over the course of 2019, and on March 12, 2020, held a meeting with members of the marijuana industry to identify other issues which could be addressed by this update. The topics that came out of these meetings that are not already discussed above included:

- Diversifying types of marijuana establishments;
- Defining drug and alcohol treatment facilities;
- Clarifying in the Code that marijuana warehousing is allowed;
- Amending the sign code to allow marijuana facilities to have increased signage;
- Addressing pollen drift;
- Allowing greenhouse marijuana grows in the Agricultural Zoning District;
- Clarifying where marijuana extraction is allowed (other than under personal cultivation); and
- Addressing setbacks for ancillary educational properties.

The following section outlines the topics listed above that staff chose not to address in this update, and the reasoning for such decision:

Diversifying types of marijuana establishments

In 2014 staff updated the Code to change the term "Medical Marijuana Center" to "Marijuana Establishment", for the primary purpose of including both recreational and medical marijuana. Staff considered the request to diversify the Marijuana Establishment use and separate marijuana uses into additional discrete use categories to allow for a more refined mix of uses in various zoning districts. Staff decided to leave this topic out of the update and continue to categorize all marijuana uses under "Marijuana Establishment" because further categorizing each use could potentially lead to nonconforming uses and the current Code already allows marijuana uses in the zone districts where the County has determined marijuana related businesses to be appropriate. Additionally, this update was intended as a minor update to the regulations. Expanding and breaking down the Marijuana Establishment use into discrete uses provided no clear benefits and could potentially impact many of the County zoning districts. This Code update did not include the type of public engagement plan necessary to evaluate a change of this nature.

Amending the Sign Code to Allow Marijuana Facilities to Have Increased Signage

Members of the marijuana industry expressed interest in reevaluating the County's signage regulations to loosen restrictions on marijuana related signage. Because content-based regulations on signage raise constitutional issues, this change may require changing signage rules applicable to all County signs. Staff has determined that this change is beyond the scope of this Code update.

Pollen Drift

Pollen drift is a term used to describe cross pollination between hemp and marijuana that results in either too much THC in hemp, or not enough THC in marijuana, resulting in significant reductions in crop value. Pollen drift only impacts outdoor grows, which are currently limited to hemp production in Boulder County. Allowing cultivation of marijuana in the Agricultural zoning district could create this situation. Since the County does not propose to expand

marijuana cultivation into the Agricultural zoning district at this time, staff concluded that pollen drift was not an issue that needed to be addressed at this time.

Allowing Marijuana Cultivation in the Agricultural Zoning District

The marijuana industry and some members of the public who are concerned about energy use have expressed interest in expanding opportunities for greenhouse grow operations into the Agricultural zoning district, where these grows are not currently allowed. Since the first set of marijuana regulations, the County has viewed marijuana cultivation as an industrial or manufacturing type use rather than agricultural use due to the nature of how marijuana is grown. The County has also expressed concern that marijuana cultivation operations could monopolize farmland in the County, pushing out existing farmers, damaging the local food system, and diminishing agricultural diversity within the County. As noted, this update was intended as a minor update to the Code, and changes to agricultural uses impact many neighborhoods and homes that are intermingled amongst the agricultural areas of the County. This update did not include the type of public engagement plan necessary to consider a change of this nature.

Ultimately, the scope of this Code update includes:

1. Clarifying where marijuana extraction is allowed (other than under personal cultivation);
2. Addressing hospitality establishments;
3. Defining drug and alcohol treatment facilities;
4. Addressing setbacks for ancillary educational properties;
5. Clarifying the regulations around the warehousing of marijuana; and
6. Updating State Statute citations in the Code.

The following section will provide background information on each of these items, as well as the corresponding proposed text amendments. Item 6 above, “Updating State Statute citations in the Code”, will not be addressed below, as it does not require interpretation. However, Item 6, along with all other proposed amendments, can be found in Attachment A of this staff packet.

SUMMARY OF PROPOSED TEXT AMENDMENTS

The following section outlines the proposed text amendments which were presented to the Boulder County Planning Commission on June 16, 2021. Additional proposed text amendments which address the Planning Commission’s comments can be found in the “Summary of Planning Commission Meeting” section.

1. Clarifying where extraction is allowed (other than under personal cultivation)
Currently, marijuana extraction is only mentioned under Article 4-516.Q: Residential Marijuana Processing and Cultivation, which is an allowed Accessory Use. The Code does not address where other extraction type uses are permitted in the County. Staff proposes to clarify in the Code that cannabinoid extraction is allowed as a Light Industrial use, which would allow for extraction in the General Industrial zoning district as well. This clarification is consistent with past interpretations but will now be explicitly stated in the Code. Please see the proposed amendments below in **blue**.

4-506.C Light Industrial

1. Definition: Places for the conduct of any light industrial activity, which is not specifically listed in this Code, including but not limited to assembling; compounding; food or beverage processing; inside storage, processing or treatment of products; scientific research; **extraction**; and sign manufacturing.
2. Districts Permitted: By right in LI and GI
3. Parking Requirements: One space per 500 square feet of floor area

4. Loading Requirements: One loading space for 10,000 or more square feet of floor area
5. Additional Provisions:
 - a. ~~This use shall also be granted and maintain all applicable local, state, and federal permits.~~ All required local, state, and federal licenses and permits, including those related to marijuana must be obtained from the appropriate regulatory agencies.
 - b. Accessory inside retail sales may occupy up to 10% of the total floor area of the main use. Any marijuana retail sales will be considered a Marijuana Establishment as described in Section 4-512.I of this Code.

2. Addressing Hospitality Establishments

In 2019, the State of Colorado authorized hospitality establishments, which are locations in which medical and retail marijuana may be consumed on site. Subject to local approval, retail food establishments may apply for a marijuana hospitality establishment license. The updated State regulations provide that hospitality establishments may only operate in local jurisdictions that have adopted an ordinance or resolution authorizing said operation within the jurisdiction. Boulder County has not authorized hospitality establishments, so staff is proposing to clarify this in the Code by indicating that Membership Clubs, retail food establishments, and Eating or Drinking Places, with or without drive-through service, as defined in the Code, are not eligible for this use. This clarification will prevent future misinterpretation of the Code. Please see the proposed amendments below in blue.

4-504 Community Uses

F. Membership Club

1. Definition: A facility, including associated eating, drinking, and recreational facilities, owned or operated by a group of people organized for a common social, educational, service, or recreational purpose. These clubs are usually characterized by certain membership qualifications, payment of fees or dues, regular meetings, a constitution, and by-laws. This use does not include establishments that require a license under Colorado State Statutes related to marijuana.
2. Districts Permitted: By right in T, B, C, LI, and GI; by Special Review in F, A, and MI
3. Parking Requirements: One space per 75 square feet of floor area
4. Loading Requirements: None
5. Additional Provisions: None

4-512 Retail and Personal Service Uses

E. Eating or Drinking Place, with drive through service

1. Definition: An establishment for the sale and consumption of food and beverages on the premises, which includes drive through service, and does not include establishments that require a license under Colorado State Statutes related to marijuana.
2. Districts Permitted: By Special Review in T, B, C, and GI
3. Parking Requirements:
 - a. One space per 75 square feet of floor area
 - b. Eight stacking spaces per drive up window or station
4. Loading Requirements: One loading space for 10,000 or more square feet of floor area
5. Additional Provisions: None

**** This same language would also be reflected in Section 4-512. F. Eating or Drinking Place, without a drive through service**

3. Defining Alcohol and Drug Treatment Facilities for the Purpose of Establishing the Setback from a Marijuana Establishment

Pursuant to Section 4-512.I.5.d of the Code, Marijuana Establishments shall not be located within 1,000 feet of an alcohol or drug treatment facility. This requirement is difficult for CPP to implement and industry to comply with because alcohol and drug treatment facilities are not defined in the Code. Given the lack of definition, a treatment facility could be a private therapist's office or an institution such as hospital. Additionally, it is difficult to identify the location of treatment facilities when broadly interpreted, which makes it difficult for staff to ensure compliance with the Marijuana Establishment setback requirement. Staff intends for this Code update to include the definition of alcohol or drug treatment facility in order to aid in implementation of the setback.

This portion of the update was reviewed by staff from the Community Health division of Public Health, as well as members of the Substance Use Advisory Group, so that multiple perspectives and expert opinions could be taken into consideration. Staff additionally reached out to neighboring communities to compile and compare data on whether and how they define treatment facilities.

After discussing the issue with Public Health, receiving feedback from the Substance Use Advisory Group, and receiving feedback from surrounding communities, staff developed three options to define drug and alcohol treatment facilities:

1. A facility wherein treatment and 24-hour on-site supervision are provided for substance abuse with the goal of enabling residents to live independently when treatment is completed.
 - a. *This is the **narrowest definition**, which focuses on immediate crisis level treatment.*
2. A facility that provides for the treatment of persons having drug or alcohol abuse problems under the supervision of professional health care or social services providers.
 - a. *This is a **middle road definition** which focuses on those under direct care but not as narrowly defined as Option 1. This would potentially capture a larger number of facilities.*
3. Any facility which provides professional services to persons who suffer from or are recovering from addiction to alcohol and/or drugs.
 - a. *This is the **broadest definition** which would capture ongoing (perhaps life-long) counseling at a therapist office and is not limited to direct care by a medical or social services provider. This could also capture sober living facilities in residential areas.*

Staff proposes Option 1 in the draft regulations for the following reasons:

- Maintaining a narrow definition will capture the facilities which offer the most immediate, crisis level treatment, whose patients may be the most sensitive to marijuana establishments nearby.
- CPP can readily identify these types of facilities and effectively implement the buffer requirements in the Code.

Please see proposed amendments below in **blue**:

4-512.I Marijuana Establishment

5. Additional Provisions:

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 and ancillary properties with students below the college grade level (including facilities in the unincorporated County of substantially similar facilities in an adjacent municipality or county), as measured from the closest point of the subject parcel lines. An alcohol or drug treatment facility shall be defined as a facility wherein treatment and 24-hour on-site supervision are provided for substance abuse with the goal of enabling residents to live independently when treatment is completed.

4. Setbacks between ancillary educational properties and Marijuana Establishments

The current Code references “educational facilities” for setback purposes but does not address ancillary school properties such as play fields that do not contain buildings. Staff proposes updating the Code to include educational ancillary properties in the regulatory buffer so that a Marijuana Store may not be located within 1,000 feet of these properties, as the intent of the setback was to buffer children and the educational environment from marijuana uses. Please see the proposed amendment below in blue:

4-512.I Marijuana Establishment

5. Additional Provisions:

d. A Marijuana Store shall not be located within 1,000 feet of an alcohol or drug treatment facility, a licensed childcare facility, or an educational facility and ancillary properties 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. An alcohol or drug treatment facility shall be defined as a facility wherein treatment, and 24-hour on-site supervision are provided for substance abuse with the goal of enabling residents to live independently when treatment is completed.

5. Text amendments to section 4-512.I. Marijuana Establishment also include a reference to the Marijuana warehouse section of the Code for ease of use by the public. This proposed amendment is also reciprocated in the Warehouse and Distribution Center provisions. Please see the proposed amendments below in blue):

5. Additional Provisions:

h. For marijuana warehouse regulations, refer to section 4-515.b of this Code.

5. Clarifying requirements for Marijuana Warehouse use

Currently, the Code does not specifically identify marijuana warehousing as an allowed use. Instead, staff has interpreted the Code as allowing this use under the Warehouse Uses classification. Staff reached out to surrounding communities to gain insight on how they regulate marijuana warehouses and found that many do not permit marijuana warehousing. Those that do indicated that odor and security are among common concerns. State regulations currently require additional odor and safety measures for these types of uses, so staff proposes referencing these requirements in the Code. The proposal also includes a reference to the Marijuana Establishment section of the Code for ease of use by the public. Please see the proposed amendments below in blue):

4-515 Warehouse Uses

B. Warehouse and Distribution Center

1. Definition: A building used primarily for the inside storage and distribution of goods and materials, which includes land and buildings used as a relay station for the transfer of goods from one vehicle or party to another, and the parking and storage of tractor and/or other trailer units.
2. Districts Permitted: By right in LI and GI
3. Parking Requirements: One space per 1,000 square feet of floor area
4. Loading Requirements: One loading space for 10,000 or more square feet of floor area
5. Additional Provisions:
 - a. The parking and storage of tractor and/or other trailer units does not allow the storage either of empty inoperable trailers or trailers as storage units themselves.
 - b. All required local, state, and federal licenses and permits, including those related to marijuana must be obtained from the appropriate regulatory agencies.
 - c. For Marijuana Establishments, refer to section 4-512.I of this Code.

SUMMARY OF PLANNING COMMISSION MEETING

The above proposed text amendments were considered by the Boulder County Planning Commission at a public hearing on June 16, 2021. Commissioners Melanie Nieske, Sam Fich, Lieschen Gargano, Sam Libby (Vice Chair), David Hsu, Ann Goldfarb (Chair), Gavin McMillan, and Mark Bloomfield (2nd Vice Chair) were all in attendance. Commissioner Todd Quigley was excused.

Molly Marcucilli, Planner I, presented the proposed text amendments to the Planning Commission. One member of the public, Dylan Donaldson, provided a comment which suggested aligning the language in the Code related to marijuana to the terminology used in the State regulations, which would clear up confusion around marijuana uses and their associated regulations and licensing requirements. Staff responded to this comment by indicating that this was a topic of discussion in this Code update, but staff decided not to pursue it because it would result in existing marijuana establishments becoming nonconforming uses. Additionally, in some ways, the zoning is not intended to perfectly align with State statutes since the State and the County may have different goals and County land use regulations may be stricter than the State regulations. For example, some uses are permitted at the state level, but not permitted at the County level.

The following section outlines the comments received from the Planning Commission and staff's responses. If applicable, proposed text amendments which address the comments are highlighted in yellow, and the original proposed amendments found in the above section will still be in blue. The proposed text amendments which incorporate the feedback and direction from Planning Commission can be seen in their entirety in Attachment A of this staff packet.

Commissioner Goldfarb suggested adding a definition of a Marijuana Store, which is a sub-category of Marijuana Establishment found in Article 4-512.I. Staff agrees that this clarification would be helpful to clarify the meaning of the term and proposes to add the following language under Article 4-512.I.1.a: Marijuana store (location for retail purchase of marijuana and marijuana products by the general public). The proposed amendment is below in yellow:

4-512.I Marijuana Establishment

1. Definition: 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 (location for retail purchase of marijuana and marijuana products by the general public)

- 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

Commissioner Goldfarb also suggested adding the word “regulations” after “Marijuana Establishment” under 4-515.B.5.c to make the language more precise. Staff agrees with this recommendation and proposes the following text amendment in yellow:

4-515 Warehouse Uses

B. Warehouse and Distribution Center

1. Definition: A building used primarily for the inside storage and distribution of goods and materials, which includes land and buildings used as a relay station for the transfer of goods from one vehicle or party to another, and the parking and storage of tractor and/or other trailer units.
2. Districts Permitted: By right in LI and GI
3. Parking Requirements: One space per 1,000 square feet of floor area
4. Loading Requirements: One loading space for 10,000 or more square feet of floor area
5. Additional Provisions:
 - a. The parking and storage of tractor and/or other trailer units does not allow the storage either of empty inoperable trailers or trailers as storage units themselves.
 - b. All required local, state, and federal licenses and permits, including those related to marijuana must be obtained from the appropriate regulatory agencies.
 - c. For Marijuana Establishment regulations, refer to section 4-512.I of this Code.

Commissioners Hsu and Libby suggested clarifying that extraction of marijuana is the only type of extraction permitted in the Light Industrial and General Industrial Zoning Districts, so as not to confuse marijuana extraction with mineral or other types of extraction. In order to clarify, staff proposes adding “plant” before “extraction”, which clarifies that marijuana and other types of plant extraction are allowed, but not mineral or oil and gas extraction. The proposed amendment is below in yellow:

4-506.C Light Industrial

1. Definition: Places for the conduct of any light industrial activity, which is not specifically listed in this Code, including but not limited to assembling; compounding; food or beverage processing; inside storage, processing or treatment of products; scientific research; plant extraction; and sign manufacturing.

Commissioners Hsu, Libby, and Goldfarb suggested specifying which properties qualify as ancillary educational facilities to reduce confusion and ambiguity around the term “ancillary”. Staff proposes adding the language, “and ancillary properties owned by the educational facility, including but not limited to sport fields, play grounds, community gardens, or where for other reasons school children congregate.” The proposed amendment is below in yellow:

4-512.I Marijuana Establishment

5. Additional Provisions:

d. A Marijuana Store shall not be located within 1,000 feet of an alcohol or drug treatment facility, a licensed childcare facility, or an educational facility with students below the college grade level and ancillary properties owned by the educational facility, including but not limited to sport fields, play grounds, community gardens, or where for other reasons school children congregate (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. An alcohol or drug treatment facility shall be defined as a facility wherein treatment, and 24-hour on-site supervision are provided for substance abuse with the goal of enabling residents to live independently when treatment is completed.

SUMMARY OF PUBLIC ENGAGEMENT AND FEEDBACK

Staff acknowledges that the marijuana industry identified larger issues, such as allowing marijuana cultivation in the Agricultural zoning district and addressing pollen drift between hemp and THC. However, the purpose of this update is primarily to clarify existing Code language as opposed to developing broader policy changes. Tackling broader policy changes that would impact many aspects of the community would require significant community engagement, and COVID-19 made it difficult to do so. Due to the nature of this update and the circumstances surrounding COVID-19, the scope of public engagement was limited to the marijuana industry, as well as the Boulder County Public Health Department and the Substance Use Advisory Council. Before the Planning Commission public hearing, draft regulations were sent out for comment to a County-generated email list of marijuana industry members, the County Land Use Code change email list, and Public Health staff, and all public notice requirements have been met.

Staff received three comments back after the draft regulations were sent out, two of which asked about the absence of regulations related to marijuana delivery in the update, and one which asked to be added to the email list for code updates related to marijuana. These comments can be reviewed in Attachment C.

Staff worked with the Community Health division in Public Health to compose a definition for drug and alcohol treatment facilities. Public Health staff also reached out to the Substance Use Advisory Group, which is a group of individuals and organizations dedicated to responding to the opioid epidemic and other substance abuse, for any insight on which types of treatment facilities to include in the definition. A summary of this feedback can be reviewed in Attachment B.

All interested parties had the opportunity to comment on the proposed regulation changes during the Planning Commission public hearing and will have the opportunity to comment during the Board of County Commissioners public hearing. Notice of both hearings was provided in the newspaper and sent to the email lists the County maintains for people who have expressed interest in Land Use Code text amendments and marijuana related activities.

RECOMMENDATION

Article 16-100.B of the Boulder County Land Use Code contains criteria for amending the text of the Land Use Code. Staff reviewed the proposed text amendments against these criteria and finds the following:

- 1) *The existing text is in need of the amendment.*

- a. As discussed in this recommendation, this update provides necessary clarifications and updates that will help the industry, staff, and the public to better understand and implement this Code.

2) *The amendment is not contrary to the intent and purpose of this Code.*

- a. As described in section 1-300 of the Code, “This Code is enacted to protect and promote the health, safety and general welfare of the present and future inhabitants of Boulder County and to guide future growth, development, and distribution of land uses within Boulder County.” This Code update responds to the dynamic nature of the marijuana industry and regulatory framework while balancing the needs of the greater community, which is in keeping with the intent and purpose of the Code

3) *The amendment is in accordance with the Boulder County Comprehensive Plan.*

Staff finds that the proposed text amendments are in accordance with the Comprehensive Plan, including the following portions:

- a. Countywide Goals
 - i. Design of the Region
 - 1. Land Use Patterns – One of Boulder County’s Countywide Goals is “to promote diverse, compatible, and functional land use patterns”. The proposed text amendments align with this goal since clear and functional regulations are an essential tool in developing diverse, compatible, and functional land use patterns.
 - ii. Economics
 - 1. Steward – “Boulder County stewards its economy through sound regulations and collaboration”. By aligning the County’s marijuana related regulations with the evolving state regulations and having clear local regulations, the marijuana industry can evolve and grow.
 - 2. Engage – “Boulder County proactively engages the public and stakeholders in fostering a vital regional economy.” In this particular update, Boulder County met with stakeholders in the marijuana industry to discuss the scope of the update and to identify potential issues that could be addressed. The industry was also sent draft regulations for review and comment.
 - iii. Public Health
 - 1. Foster Healthy Families and Communities – “Boulder County values and creates environments that foster healthy families and communities”. By developing a definition for alcohol or drug treatment facilities, the County will be able to identify the locations of these types of facilities in order to better implement and ensure compliance with the buffer between marijuana establishments and alcohol or drug treatment facilities. This buffer is intended to support those in recovery and thus foster healthy families and communities.

Staff and Planning Commission have found that the criteria for a Land Use Code text amendment have been met and recommend that the ***Board of County Commissioners approve docket DC-20-0001: Text Amendments to Marijuana Regulations***.

DOCKET DC-20-0001

Please note: A strike-through format is utilized to denote language for deletion and an underline format is utilized to indicate new changes or additions.

Article 4-506: Industrial Uses

C. Light Industrial

1. Definition: Places for the conduct of any light industrial activity, which is not specifically listed in this Code, including but not limited to assembling; compounding; food or beverage processing; inside storage, processing or treatment of products; scientific research; plant extraction; and sign manufacturing.
2. Districts Permitted: By right in LI and GI
3. Parking Requirements: One space per 500 square feet of floor area
4. Loading Requirements: One loading space for 10,000 or more square feet of floor area
5. Additional Provisions:
 - ~~a. This use shall also be granted and maintain all applicable local, state, and federal permits. All required local, state, and federal licenses and permits, including those related to marijuana must be obtained from the appropriate regulatory agencies.~~
 - ~~b. Accessory inside retail sales may occupy up to 10 percent of the total floor area of the main use. Any marijuana retail sales will be considered a Marijuana Establishment as described in Section 4-512.I of this Code.~~

Article 4-504: Community Uses

F. Membership Club

1. Definition: A facility, including associated eating, drinking, and recreational facilities, owned or operated by a group of people organized for a common social, educational, service, or recreational purpose. These clubs are usually characterized by certain membership qualifications, payment of fees or dues, regular meetings, a constitution, and by-laws. This use does not include establishments that require a license under Colorado State Statutes related to marijuana.
2. Districts Permitted: By right in T, B, C, LI, and GI; by Special Review in F, A, and MI
3. Parking Requirements: One space per 75 square feet of floor area
4. Loading Requirements: None
5. Additional Provisions: None

Article 4-512: Retail and Personal Service Uses

E. Eating or Drinking Place, with drive through service

1. Definition: An establishment for the sale and consumption of food and beverages on the premises, which includes drive through service, and does not include establishments that require a license under Colorado State Statutes related to marijuana.
2. Districts Permitted: By Special Review in T, B, C, and GI
3. Parking Requirements:
 - a. One space per 75 square feet of floor area
 - b. Eight stacking spaces per drive up window or station
4. Loading Requirements: One loading space for 10,000 or more square feet of floor area
5. Additional Provisions: None

F. Eating or Drinking Place, without drive through service

1. Definition: An establishment for the sale and consumption of food and beverages on the premises, which does not include drive through service, and does not include

establishments that require a license under Colorado State Statutes related to marijuana. This may include small scale accessory beverage processing such as wineries, nanobreweries and microdistilleries.

2. Districts Permitted: By right in B, C, and GI; by Special Review in T
3. Parking Requirements: One space per 75 square feet of public seating area
4. Loading Requirements: One loading space for 10,000 or more square feet of floor area
5. Additional Provisions:
 - a. Small scale food and beverage processing means less than 3,000 square feet of processing or manufacturing area.

I. Marijuana Establishment

1. Definition: 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 (a location for retail purchase of marijuana and marijuana products by the general public)
 - 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. §12-43-3-10144-10-101~~, et. seq., ~~and the Colorado Retail Marijuana Code, C.R.S. §12-43-4-101~~, et. seq. (“the Codes CMC”), are and will be subject to the provisions and limitations stated in ~~these Codes~~ the CMC. 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. 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 with 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 and ancillary properties owned by the educational facility, including but not limited to sport fields, play grounds, community gardens, or where for other reasons school children congregate (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. An alcohol or drug treatment facility shall be defined as a facility wherein treatment and 24-hour on-site supervision are provided for

substance abuse with the goal of enabling residents to live independently when treatment is completed.

- 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 4-512.l .5 .c ., provided there is not an associated marijuana store on the same parcel .
- 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.
- h. For marijuana warehouse regulations, refer to section 4-515.b of this Code

Article 4-515: Warehouse Uses

B. Warehouse and Distribution Center

- 1. Definition: A building used primarily for the inside storage and distribution of goods and materials, which includes land and buildings used as a relay station for the transfer of goods from one vehicle or party to another, and the parking and storage of tractor and/or other trailer units.
- 2. Districts Permitted: By right in LI and GI
- 3. Parking Requirements: One space per 1,000 square feet of floor area
- 4. Loading Requirements: One loading space for 10,000 or more square feet of floor area
- 5. Additional Provisions:
 - a. The parking and storage of tractor and/or other trailer units does not allow the storage either of empty inoperable trailers or trailers as storage units themselves.
 - b. All required local, state, and federal licenses and permits, including those related to marijuana must be obtained from the appropriate regulatory agencies.
 - c. For Marijuana Establishment regulations, refer to section 4-512.l of this Code

Summary of regulations from Surrounding Communities				
Community	Treatment facility definition	Enforcement of buffer btwn mj establishment and treatment facility	Additional regulations for mj warehousing	Notes
Longmont	<p>Residential Rehabilitation facility: An Institutional facility for persons referred by a state department or division, or by a physician or Medical institution, wherein <u>medical treatment, counseling, rehabilitation, and 24-hour on-site supervision</u> are provided for <u>substance abuse</u>, emotional disorders, physical disabilities, or other medical conditions with the goal of enabling residents to live independently when treatment is completed.</p> <p>Sober living home: a residential dwelling used by persons protected by the provisions of the FHA who are not currently illegally using or addicted to a controlled substance but are <u>recovering from abuse of alcohol or a controlled substance</u>, where the residence serves as an interim environment between rehab and treatment facilities and mainstream society.</p>	<p>-Cap of 4 marijuana establishments in the city.</p> <p>-250 ft from residential zoning</p> <p>-1000 ft from school k-12</p> <p>-Don't enforce distance between mj establishments and any of these facilities.</p>	Doesn't permit warehouse or distribution of marijuana	Outpatient treatment falls under general "Medical Clinic" definition
Boulder	<p><i>Addiction recovery facility</i> means a facility that may permit <u>short-term overnight</u> stays that provides for the treatment of persons having <u>drug or alcohol abuse problems under the supervision of professional health care or social services providers</u>.</p>	<p>-Case-by-case basis.</p> <p>-Don't maintain a list of every facility since pop up/closing -</p> <p>-Looking in real time</p> <p>-Do map location of mj businesses</p>	<p>Not issuing licenses for warehouse</p> <p>-Lots of security restrictions and odor</p>	Using federal definition for addiction recovery facility
Lyons	No definition	<p>Have a buffer btwn mj establishments and "drug treatment facilities".</p> <p>-Has a cap (3) on # of mj businesses, paired with business change-in-use, permitting, and site and development plan procedures help catch any proposals</p>	<p>-All mj storage to be indoors</p> <p>-mj centers limited to 3,000 SF max.</p> <p>-Proper ventilation.</p>	More like prevention of violation versus enforcement

		that may conflict with buffer		
Broomfield	Don't have a definition (running into same issue as us). Current operation approach is <u>any state licensed facility for outpatient treatment (not support groups like AA etc.)</u>	Planning on applicant self-reporting and city verification, but still in the works	Unsure if they will allow storage, production, or cultivation facilities	Currently doesn't allow rec or medical marijuana facilities but interested in allowing retail rec facilities in the future.
Denver	<i>Alcohol or drug treatment facility:</i> any facility located within a medical office or hospital, as these terms are defined by the zoning code, with the <u>primary purpose of counseling or providing medical services to patients who suffer from addictions to alcohol or drugs.</u>			
Nederland	NA			

Feedback from Substance Use Advisory Group Regarding Treatment Facilities				
What perspective you are representing?	At what point during someone's recovery is it most critical to avoid exposure to marijuana?	Of all the treatment facilities that the state may license, which types are most important to be buffered from marijuana establishments?	Is there anything else we should take into consideration while exploring which types of treatment facilities we want to buffer from marijuana establishments?	If you are comfortable with Boulder County staff following up with you, please provide your email address
Person impacted by substance use - in recovery, using treatment services, using substances, Family/friend of someone impacted by substance use - in recovery, using treatment services, using substances	Very contingent on use history. In <u>sober living, at start</u> - if using to manage withdrawal and only in supportive services/non-residential treatment, different story.	Sober living facilities, treatment centers for marijuana use disorder in particular	It's a legal state. If people want to smoke they are going to smoke. Prioritize residential treatment facilities and places that deal a lot with marijuana use disorder.	tg.dane.hall@gmail.com
Family/friend of someone impacted by substance use - in recovery, using treatment services, using substances, Prevention specialist, staff	Really it <u>depends on the person</u> . Initially as they are <u>trying to become sober</u> that is important. However, any stressors or challenges as well as other triggers such as seeing someone use,	Unsure	During this time of COVID we are learning that folks have been more likely to relapse. I would encourage the broadest definition of treatment facilities for the buffer given this. However, I would	

	smelling the substance, etc. can be a critical point for that individual.		keep in mind the unintended consequence of how a new treatment center might be impacted based on where MJ establishments are located. Think about the importance of proximity to a bus stop for treatment facilities as well.	
Family/friend of someone impacted by substance use - in recovery, using treatment services, using substances, Treatment provider, Medical professional	I don't think avoidance is necessary if the patient is not in recovery for marijuana overuse.	treatment facilities that see Pediatric patients	I have not encountered location of marijuana establishments as a problem in treating Opioid Use Disorder or Alcoholism	spankonin@saludclinic.org

SUMMARY

Feedback from surrounding communities and Substance Use Group:

- Neighboring communities have different definitions for treatment facilities, but the common factors are:
 - Supervision by a professional
 - Recovery centers, counseling, rehab for drug and alcohol abuse
- Enforcement/tracking mechanisms for ensuring buffers between marijuana establishments and treatment facilities include:
 - Limiting # of marijuana establishments
 - Buffer between marijuana establishments and residential zoning
 - Rely on applicant self-reporting and city/county verification
- The above communities either do not permit marijuana warehousing or they mentioned odor and security being the primary concerns for regulation

Re: DRAFT Marijuana Regulations BoCo | REQUEST for feedback

Bia Campbell <bia@vsstrategies.com>

Fri 2/5/2021 3:13 PM

To: Marcucilli, Molly <mmarcucilli@bouldercounty.org>

Hey Molly,

I received the email below from someone who forwarded it to me. How do I get included on the list of people who get updates for all marijuana related zoning and setback issues?

Thank you so much for your time.

I hope you have a fantastic weekend.

Bia Campbell | Associate

VS Strategies

Cell: 772.485.2791

bia@VSStrategies.com

www.VSStrategies.com

On Fri, Feb 5, 2021 at 2:44 PM Savannah Mantele <Savannah@sewaldhanfling.com> wrote:

Savannah Mantele

Sewald Hanfling Public Affairs

(O): 303.800.4500

(C): 303.304.0031

savannah@sewaldhanfling.com

From: Marcucilli, Molly <mmarcucilli@bouldercounty.org>

Sent: Monday, February 1, 2021 1:52:10 PM

To: Marcucilli, Molly <mmarcucilli@bouldercounty.org>

Subject: DRAFT Marijuana Regulations BoCo | REQUEST for feedback

Good afternoon,

My name is Molly Marcucilli and I am a Planner with Boulder County Community Planning & Permitting. I am leading an update to our Land Use Code regarding the marijuana regulations, and I wanted to send all interested parties a summary of what we are planning on updating. Please review the attached summary of our draft regulations and provide any feedback on these changes by **Monday, February 15th**.

Please feel free to pass these proposed changes to anyone else you believe may want to review them.

Do not hesitate to reach out with any questions.

Thank you,

Molly

Due to COVID-19, the Boulder County Community Planning & Permitting Department is conducting business and providing services virtually. Our physical office in Boulder is currently closed to the public. Please visit us online at <https://www.boco.org/cpp> for more information.

RE: DRAFT Marijuana Regulations BoCo | REQUEST for feedback

Jeff Gard <jeff@gardlawfirm.com>

Mon 2/1/2021 1:58 PM

To: Marcucilli, Molly <mmarcucilli@bouldercounty.org>

Dear Molly,

I reviewed the document and am curious why delivery is not included since it also is now accepted by the state. I conferred with licensing and the County Attorney's office earlier last month and understood that it would be included as a 2021 agenda topic.

I look forward to hearing from you.

Sincerely,

Jeff

Jeffrey S. Gard



Jeffrey S. Gard
Gard Law Firm, LLC
2541 Spruce Street
Boulder, Colorado 80302
Telephone: (303) 499-3040
Facsimile: (303) 379-6256
electronic mail: jeff@gardlawfirm.com
website: www.gardlawfirm.com
website: www.marijuanalawscolorado.com
Multi-year winner Best Law Firm in Boulder, Colorado
5280 Magazine Top Lawyer: Cannabis Law
Top 100 Colorado Criminal Defense Attorneys, The National Trial Lawyers Association
Top 100 Colorado Litigation Attorneys, American Society of Legal Advocates
Life Member Colorado Criminal Defense Bar

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From: Marcucilli, Molly <mmarcucilli@bouldercounty.org>

Sent: Monday, February 1, 2021 1:52 PM

To: Marcucilli, Molly <mmarcucilli@bouldercounty.org>

Subject: DRAFT Marijuana Regulations BoCo | REQUEST for feedback

Good afternoon,

Attachment C

Re: DRAFT Marijuana Regulations BoCo | REQUEST for feedback

Shannon Fender <shannon.fender@nativerootsdispensary.com>

Mon 2/1/2021 2:42 PM

To: Marcucilli, Molly <mmarcucilli@bouldercounty.org>

Hi Molly, thank you for sending this. What is your timeline for going before council? We have been hoping BoCo will address marijuana delivery and have been previously told that they were waiting to incorporate more regulations in one larger proposal before the commission (I'm guessing that is this?). Although i note there is no reference to marijuana delivery in this document. Is that because your role is specifically on planning and zoning issues? Thank you!

Shannon Fender

303.250.0125

Please excuse my brevity and typos

Sent from my iPhone

On Feb 1, 2021, at 1:52 PM, Marcucilli, Molly <mmarcucilli@bouldercounty.org> wrote:

Good afternoon,

My name is Molly Marcucilli and I am a Planner with Boulder County Community Planning & Permitting. I am leading an update to our Land Use Code regarding the marijuana regulations, and I wanted to send all interested parties a summary of what we are planning on updating. Please review the attached summary of our draft regulations and provide any feedback on these changes by **Monday, February 15th**.

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Molly

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Molly Marcucilli | Long Range Planner I

Boulder County Community Planning & Permitting

Service hours: 7:30 AM - 5 PM Monday, Wednesday, Thursday, and 10AM - 5PM Tuesday

Mailing Address: P.O. Box 471, Boulder, CO 80306

Direct: 303-441-4597 | Main: 303-441-3930

mmarcucilli@bouldercounty.orgwww.BoulderCounty.org