

RESOLUTION 2021-57

A resolution approving Boulder County Community Planning & Permitting Docket DC-20-0001: Text Amendments to Marijuana Regulations

Recitals

A. The Board of County Commissioners of Boulder County (the “Board”) is authorized to amend the text of the County's Zoning Regulations according to the procedures in Article 16 of the Boulder County Land Use Code 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 “Code”), which the Board has amended on subsequent occasions.

D. 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 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).

E. The impetus for the present 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 amended regulations, staff took the 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 so that marijuana is regulated in a manner that serves both the industry and the general public.

F. DC-20-0001 (the “Docket”), authorized by the Board at a public meeting on January 28, 2020, proposed text amendments to the Code (the “Proposed Amendments”) to clarify existing Code language that has been identified as ambiguous and to align the Code with state statutes and regulations, as set forth in the Boulder County Community Planning & Permitting

Department's memorandum and recommendation dated July 29, 2021, with its attachments (the "Staff Recommendation").

G. The scope of the Proposed Amendments includes:

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

H. The Boulder County Planning Commission (the "Planning Commission") held a duly noticed online public hearing on the Proposed Amendments on June 16, 2021. The Planning Commission recommended approval of the Proposed Amendments as presented with additional recommendations to add clarifying language and certified the Docket for action to the Board.

I. On July 29, 2021, the Board held a duly noticed online public hearing on the Docket (the "Public Hearing") and considered the Staff Recommendation, documents, and testimony presented by County Community Planning & Permitting Department staff. Five members of the public spoke at the Public Hearing.

J. Based on the information presented at the Public Hearing, the Board finds that the Proposed Amendments included in **Exhibit A** meet the criteria for text amendments contained in Article 16-100.B of the Code, in that the existing text is in need of amendment; the Proposed Amendments are not contrary to the intent and purpose of the 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, effective as of July 29, 2021.
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.

[Signature Page to Follow]

A motion to approve the Docket was made by Commissioner Claire Levy, seconded by Commissioner Matt Jones, and passed by a 2-0 vote. Commissioner Loachamin was excused.

ADOPTED as a final decision of the Board on this 17th day of August 2021.

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

Matt Jones

Matt Jones, Chair

Excused 7/29/21

Marta Loachamin, Vice Chair

Claire Levy

Claire Levy, Commissioner

ATTEST:

Cecilia Lacey

Clerk to the Board

Exhibit A

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