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**JOINT GRAND JUNCTION CITY COUNCIL
AND PLANNING COMMISSION
WORKSHOP
THURSDAY, DECEMBER 17, 2020,
11:30 AM
[VIRTUAL MEETING](#)**

To become the most livable community west of the Rockies by 2025

- 1. Discussion Topics**
 - a. Regulation and Taxation of Marijuana
- 2. Next Workshop Topics**
- 3. Other Business**



Grand Junction City Council

Workshop Session

Item #1.a.

Meeting Date: December 17, 2020

Presented By: Lance Gloss, Senior Planner

Department: Community Development

Submitted By: Lance Gloss, Senior Planner

Information

SUBJECT:

Regulation and Taxation of Marijuana

EXECUTIVE SUMMARY:

The City Council has directed staff to explore regulatory approaches to marijuana businesses in advance of a potential ballot question in April asking the electorate approve/disapprove marijuana related businesses within the City. Staff has engaged in research and outreach and has subsequently produced a large body of research and input on this topic. This staff report covers a range of topics including licensing, taxation, ballot language, land-use, and enforcement related to marijuana businesses. At the workshop, staff will be seeking specific direction on the following topics:

- 1) the license types that the Council would refer to the ballot;
- 2) the preferred approach to the development of proposed sales and excise tax rates;
- 3) the potential for earmarking anticipated revenues; and
- 4) the preferred timing for the development by ordinance of the regulatory structure for any marijuana related business types considered for the ballot.

BACKGROUND OR DETAILED INFORMATION:

Background

Pursuant to State law, the City Council has directed staff to explore the licensing of marijuana businesses in Grand Junction. A staff team and a community working group

of approximately 20 members has engaged in the topic since September. Previous staff updates to City Council included an overview of research and the outreach process, as well as a summary of policy tools.

Staff has identified a two-part regulatory approach as the preferred option. This approach consists of a ballot measure(s), anticipated for April 2020 pending direction from City Council, and subsequent review and approval of a regulatory ordinance(s). A ballot measure(s) would bring to the voters the question of a repeal of the 2011 voter-approved moratorium on marijuana businesses. This moratorium was established by Measure A of the April 5, 2011 ballot. It specifically posed the question to the voters whether the City of Grand Junction should prohibit the operation of medical marijuana businesses and amend the Grand Junction Municipal Code by adding a new section prohibiting certain uses of marijuana. Measure A was approved with 7802 in favor and 5703 against.

A ballot question would set a sales and/or excise tax rate as required by TABOR. Below is a more detailed review of specific factors related to licensing, taxation, ballot language, land-use, and enforcement.

Moreover, any municipality considering regulations for marijuana businesses must know that a certain level of inflexible regulatory oversight is conducted by the Marijuana Enforcement Division (MED). The MED issues state-level licenses and maintains the METRC monitoring system for the licensing of individual employees of marijuana businesses and the seed-to-sale tracking of product, among other services. The MED is aware of, and has participated in, the research and outreach being conducted in the City at this time.

The Marijuana Working Group and staff anticipates bringing a significant amount of work from the Working Group by December 17th.

License Types

A meaningful discussion of regulatory options and taxation must be informed by a firm understanding of the business types that comprise the regulated marijuana industry. Each business type requires a different license type, which must be issued by both the state and the local jurisdiction. Each license type may be issued as either a medical or retail (i.e. recreational) license. A municipality may allow only medical, only retail, both, or a mix of both for different license types.

Stores - It is staff's opinion that the general perception of the marijuana business issue focuses primarily on the sale of marijuana. The marijuana store license, which leads to the establishment of a physical store or dispensary location, may sell marijuana to persons over the age of 21 or, in the case of medical stores, to any person holding a

valid medical marijuana license. An individual cannot purchase more than 1 ounce of retail marijuana or 2 ounces of medical marijuana. A store may also sell marijuana concentrates, infused products (edibles), ointments, balms, lotions and other topical products. A store may only operate between the hours of 8 a.m. – midnight, or as further restricted by the municipality. This sale or recreational product is subject to a state sales tax of 15% at the point of sale and may be subject to additional local sales tax up to 15%. Medical sales are not subject to additional state sales tax and additional local sales tax is prohibited; only the 2.9% generic state sales tax applies to medical sales.

Generally, Colorado communities that allow stores do so in a range of commercial and/or business zone districts, and occasionally also in industrial zone districts. Stores are often subject to “buffering” standards that separate stores from other stores and stores from sensitive land-uses such as parks, daycare facilities, schools, and places of worship. They may also be subject to Conditional Use Permit or other similar processes. Odor and signage are also subject to further regulation in most communities.

Cultivation - Cultivation licenses are granted to entities that cultivate, prepare, and package marijuana and transfer to marijuana to sales businesses, research facilities, and some other license types, but not to consumers. Marijuana cultivated by a retail cultivation license can only be transferred to other retail licenses, and vice versa for medical cultivation. Outdoor cultivation of marijuana poses notable risks to outdoor cultivation of hemp and produces substantial odor during growing and harvest season and, as such, is often restricted to indoor settings. These operations often occupy industrial facilities exceeding 20,000 square feet, but may also be smaller. These facilities are typically limited to industrial zone districts, and may be subject to buffering limitations.

They typically require substantial HVAC, irrigation, and electrical facilities, and tend to employ a relatively large number of employees for the tending of plants and the trimming and packaging of their raw product. This raw product is subject to a state excise tax of 15% at the time of transfer and may be subject to additional local excise tax up to 15%. Note that these facilities are distinct from similar activities protected by the Colorado Constitution, such as the personal cultivation of up to six plants at a private residence and the caregiver model for medical cultivation.

Products Manufacturers - These businesses manufacture marijuana products that are intended for consumption in concentrated form for smoking, or for consumption other than by smoking, such as edible products, ointments, and tinctures. These businesses may vary widely in terms of their products and processes, and they may include hazardous uses which in Grand Junction would currently require a Conditional Use Permit requirement. Medical products manufacturers may transact only with medical

marijuana cultivation and sales licenses, and vice versa for retail. These businesses also generate a substantial number of jobs for processing and packaging activities, depending on the type of product manufactured and the degree of automation. There is no sales or excise tax on manufactured products, however a value-added tax, albeit rare, could be enacted.

Hospitality Business Licenses - Marijuana Hospitality Businesses are licensed to allow consumption of marijuana products on-site. These may be fixed locations that sell marijuana for on-site consumption, or that allow consumers to bring their own items for consumption. They may also be permitted as mobile premises under State law, but can be restricted to fixed locations by a municipality. Micro-sales licenses allow sales on-site up to 2 grams, often at a higher cost than would be found in a storefront, similar to a bar for alcohol consumption. Non-sales licenses are applicable to businesses with another primary service, such as a hotel or café. A jurisdiction may allow one or both types.

Delivery Licenses - Such businesses are permitted to deliver marijuana and marijuana products from sales locations to residences. Such businesses must charge \$1 surcharge on each delivery that is remitted to municipality for local law enforcement costs. These more commonly been permitted for medical marijuana, with only a small number of communities allowing retail delivery.

Other Licenses – The City currently allows marijuana testing facilities. No testing facilities, which require a testing license, exist locally at this time. Transport licenses must be issued to any business that transports marijuana among cultivators, products manufacturers, or stores, and are therefore an integral license type if other businesses are to be allowed. Research and Development businesses can also be licensed, and this was recently approved in the City and County of Denver. This use is more commonly allowed in university communities, such as Fort Collins. Finally, business operator licenses are for marijuana-related professional services and management businesses.

Sales Tax

A variety of approaches can be taken to taxation of marijuana and the recovery of licensing and administration costs through the collection of fees. A meaningful approach to taxation requires clarity as to the license types under consideration; by way of example, a sales tax is only relevant in a municipality that allows marijuana stores, and an excise tax applies if the cultivation of marijuana is allowed.

Some taxes will be applied even without a special tax rate being approved by voters. The City base sales tax rate of 3.25% and the Mesa County sales tax of 2.37% will apply if the current moratorium is lifted. An additional 15% State Marijuana Sales Tax

(which absorbs the baseline State of Colorado Sales Tax of 2.90%) will be applied automatically to retail marijuana sales while a 15% State Marijuana Excise Tax will be applied automatically to any unprocessed or “cultivated” marijuana. 10% of the 15% state sales tax is subsequently shared back to the municipality. Thus, it is possible to accrue substantial revenue through the taxation of marijuana without the application of a special municipal sales tax on marijuana.

The majority of Colorado jurisdictions that allow for marijuana stores apply a special sales tax on marijuana products. The rate of taxation varies widely, with the most common rates being 5% or 3% on top of the baseline tax rate described above. Given the complex composition of the total sales tax and excise tax rates, it is exceedingly challenging to compile a set of reliable and directly comparable examples of rates and revenues in other communities. Moreover, communities with fewer than three operating stores, such as DeBeque and Palisade, do not share detailed information about their tax revenues in order to protect sensitive tax information for those businesses. However, it is possible to supply a general survey of communities that are either deemed comparable or represent a shared regional market. The table below illustrates sales and excise tax rates in the immediate region, as well as rates for communities that are comparable in that they are of similar size, have colleges/universities, are near borders with marijuana-prohibiting states, and/or are tourist destinations.

Somewhat more evident is the regional market, in which De Beque, Palisade, and Parachute are most proximate. These communities represent the direct market competition for any marijuana stores that would exist in Grand Junction; however, due to the evolving regulations of communities, even identifying regional competition is unpredictable. The revenues of stores in De Beque were noticeably impacted by the establishment of stores in Palisade. A similar impact might be felt if regulatory changes occur in Mesa County and/or the City of Fruita subsequent to any regulatory changes occurring in Grand Junction.

Jurisdiction	Special Marijuana Sales Tax	Special Marijuana Excise Tax
Glenwood Springs	5% (authority to 15%)	5%
Fort Collins	0%	0%
Longmont*	3.5%	3% (authority to 15%)
Durango*	3%	0%
De Beque	5%	5%***
Palisade	5% and above**	5%
Parachute	0%	5%

* Cultivation licenses not issued in this jurisdiction.

** Palisade charges an occupation tax of \$5.00 for each sales transaction that is less than \$100, \$10.00 for each sales transaction between \$100.00 and \$500.00 and \$25.00 for each sales transaction of \$500.00 or more. Thus the rate on any given purchase ranges from 5% at minimum to upwards of 100% for the smallest purchases.

*** DeBeque sales tax is, in technical terms, an excise tax on the sale of products.

The chart above provides a survey of sales and excise tax rates for proximate and comparable communities. Further, more detailed information for four comparable communities—Glenwood Springs, Longmont, Boulder, and Fort Collins—can be found in attached, with certain highlights being as follows. Of those four communities, the special marijuana sales tax rate ranges from 0% from 5%, and the total revenue from that special marijuana sales tax, with the base city sales tax ranging from 3.53% to 3.86% in those communities. The cumulative annual sales tax revenue from marijuana in these cities ranges from \$584,293 to \$5,727,002. It should be noted that all of these communities have different numbers of storefronts, ranging from 4 (Longmont) to 13 (Fort Collins). Their average annual revenue per storefront was \$248,904.22 in 2019. Professionals in various communities have noted in conversations with City of Grand Junction Staff that revenue per storefront appears to decline at the point of market saturation. In other words, there may be an optimal number of stores for a given community, but it can be assumed that that number is based on many factors that are difficult to predict in advance.

Another calculation, and one that may be relevant to the discussion of a maximum number of stores (as below), is the ratio of residents to storefronts. This ratio also varies widely among the communities included in the attached report, from 4,965 residents per storefront in Glenwood Springs to 24,316 residents per storefront in Longmont.

It is important to estimate the revenue as accurately as possible for the TABOR requirements of a potential ballot question because in the event the revenue is understated a refund is required. As well, an estimate will assist with prioritizing potential uses of the revenue generated from the tax. The calculation of revenue generated from a marijuana sales tax is complex because the data needed to translate from conditions and revenues in peer communities to conditions and revenues in Grand Junction is large, diverse, and often either non-existent or ephemeral. Non-existent data includes detailed and uniform data sets on marijuana usage by residents; ephemeral data includes the impacts of neighboring community's regulations, which have continued to fluctuate statewide for over a decade. For example, while Mesa County Health Department estimates that, in 2016, 43% of adults in the County had used marijuana in their lifetimes, it is difficult to compare such data with peer communities or translate such data into revenue estimates. Broadly, it can be anticipated that the City would collect over \$1 million in sales tax revenue annually, assuming a tax rate near peer communities, but revenue could far exceed this figure under real conditions.

Specific numbers aside, it is possible to define a policy-level strategy for marijuana taxation by considering competition and the anticipated behavior of consumers.

Essentially, the City may choose to pursue a regionally typical sales tax rate (i.e. 5%), or to aim above or below this number. The assumption made when aiming below the regionally typical rate may be that a lower tax rate may attract businesses and consumers to Grand Junction rather than neighboring communities. The assumption in aiming above that rate is that a large proportion of people who would purchase marijuana in Grand Junction are either driven by accessibility more than cost, or who evaluate the expense in traveling further as outweighing the cost of a higher sales tax.

Excise Tax

The relative competitiveness of an excise tax may be more deeply impactful than that of a sales tax. Excise taxes directly impact only cultivation licenses, which tend to locate based on a calculus of transportation infrastructure, tax obligation, and operations costs. To the extent that attracting cultivation businesses to the City is desirable for the purposes of job creation and other secondary economic benefits, a competitive excise tax may be considered a primary means of accomplishing this. As illustrated in the table above, an excise tax rate of 5% is regionally typical, and it is possible to establish the authority for Council to increase the excise tax at a later date.

Licensing Fees

In addition to taxation, many communities impose licensing and administration fees and annual license renewal fees. The total cost to license a business in most peer communities appears to be approximately \$5,000-\$10,000, though the cost to do so locally has not been firmly ascertained. At a policy level, three general positions can be taken: setting licensing fees at a rate to recover licensing costs; setting licensing fees at a rate to recover licensing and enforcement costs; or setting licensing fees below licensing costs while dedicating some proportion of the tax revenue to that gap in licensing costs and expenses. Each option has its relative merits and flaws in terms of regional competitiveness and fiscal viability.

Use of Revenue

A range of uses for anticipated tax revenue has been discussed by City staff, the Marijuana Working Group, and community members at large. The two primary types of uses for any revenues from regulated marijuana are uses that are aimed at mitigating potential negative impacts of marijuana in the community and uses that are aimed at meeting other, largely unrelated community needs. The mitigating expenditures include public safety (primarily for enforcement of legal-market regulations) and mental health services (including education on underage use prevention and drug abuse rehabilitation). Grand Junction Police Department leadership have also identified black-market marijuana enforcement as a potential use of funds. Marijuana tax revenue, as suggested by the draft PROS Plan currently under Council's consideration, has been

considered for a community center, and it may fund educational investments such as school facilities and scholarships. Denver and Longmont have both earmarked revenue for affordable housing and homelessness issues.

Staff considers the relative merits of each option to be strong, and will look to the City Council to provide direction as it regards the strategic aims of the City and the relative impacts that this decision may have on the result of an April ballot question. A preliminary understanding of Council's direction on this matter will be important to staff's consideration of fees, and the amount of tax revenue that can be anticipated to be directed to enforcement and administration.

Ballot Language

The specific language for an April ballot question, if referred by the City Council, will likely impact its reception by voters; however, the language and structure of the ballot question will influence the ongoing flexibility of Council to develop regulations for marijuana over time. There are two distinct approaches to the ballot: one providing for long-term regulatory flexibility; the other providing for more direction from voters. Staff seeks direction from Council as to which of these options is preferred.

The former option consists of a general question(s) that would repeal that 2011 moratorium on marijuana businesses, as well as a question setting a tax rate or a maximum taxation authority. This option would require the City Council to adopt regulation of the types of licenses to be allowed, which could be any combination of medical and/or retail license types. It would also allow these types to be added to, or eliminated, by subsequent Ordinances. It would not, however, provide the voter with a direct decision as to which license types would be approved subsequent to a "yes" vote, leaving this decision to Council.

The latter option reduces Council's flexibility, but provides for greater clarity of the voter's intent. This would be to include, in addition to repeal of the 2011 moratorium and setting of tax rate(s), specificity as to the license types that would be allowed. This option would, however, prevent the Council from varying from the license types selected by voters without returning the question to the People. This option could be further elaborated by either: combining a recommended set of license types in a single question; or, providing an à la carte option for voters to select each license type in various questions. The latter option may introduce confusion, and may provide for a situation in which the license types allowed do not provide for a coherent model of licensure and eventual regulation.

Land-Use and Subsequent Regulation

Should a 'yes' vote on a ballot question as described be attained, and regardless of

whether specific license types are included on the ballot, the City Council would be empowered to develop a range of regulatory details. Frequently used tools in this regard include: a numerical cap on the number of marijuana businesses; buffering among marijuana businesses and between marijuana businesses and sensitive land-uses; zoning; use-specific standards; and “exclusion districts” in which no marijuana businesses may operate, all of which were discussed with the working group. A more detailed survey of land-use regulations that may be viable for Grand Junction can be found attached.

Zoning - Communities generally regulate marijuana sales so that they are permissible in commercial zone districts. Similarly, products manufacturers are generally seen akin to other processing and industrial-type of uses and are generally permissible in industrial or heavy commercial zone districts. Cultivation is frequently left to more rural or agricultural zone districts, particularly when the jurisdiction is a county, or exclusively limited to indoor grow operations in industrial zone districts, as seems to be more common in municipal environments.

Exclusion Zones - A common strategy for controlling location of marijuana-related businesses is to establish “marijuana free districts” or “exclusion zones.” In such a zone or district (typically effected as an overlay zone), no marijuana-related business may operate. This strategy has been used by many communities to keep marijuana businesses out of downtowns; the strategy has been applied to a seven-block area in downtown Palisade. Another common strategy, which is widely used in California and functions inversely to marijuana exclusion zones, are so-called “green zones” where marijuana-related businesses are specifically allowed. These green zones may have different layers for growing, processing, and sales. Usually, communities with green zones do not allow marijuana-related business outside of the green zone.

The prospect of exclusion districts has been raised primarily in relation to the City’s gateways and to areas of specific interest for City investment. Members of the working group and staff have expressed interest in establishing exclusion zones at gateways such as the Horizon Drive commercial area, the 24 Road Corridor, and portions of I-70B. Another possible exclusion district could encompass areas nearest the Riverfront at Las Colonias and/or areas directly visible from Riverside Parkway, among others.

Buffering - In addition to general zoning for marijuana businesses, buffering is the most common other standard applied to marijuana related businesses. A Colorado State standard related to Drug Free School Zones is often interpreted as requiring that no dispensary be within 1000 feet of a school, though local governments may modify this distance. Some communities establish distance requirements between marijuana businesses and other uses, possibly including hemp grows as alluded to above. It is common for communities to require buffering between businesses conducting marijuana sales as well as buffering to sensitive land-uses such as schools, parks,

licensed day care facilities, and places of worship.

Numerical Cap - Many jurisdictions have set a numerical cap on the number of marijuana businesses. There is no uniform best practice for the calculation of a limit, and the ratio between the number of stores and the number of residents in jurisdictions with caps varies widely. The most common sentiment from the working group was to set a single-digit cap. By contrast, others preferred a free-market approach whereby tools such as buffers were enacted but no numerical limit would be set.

Use-Specific Standards - Other potential marijuana-related nuisances may be mitigated through use-specific standards. For example, parking requirements per square foot may be higher than for other retail uses, especially in communities with limits on the number of marijuana retail locations. Many municipalities also establish limits on the floor area of a retail location, to prevent the establishment of very large marijuana stores and to limit the potential impacts on real estate market under certain conditions. Other common performance standards include: limits on the visual and written references to marijuana on signage; window opacity standards; odor control requirements beyond general municipal standards; and site improvements beyond general municipal requirements.

Enforcement

After reviewing the regulatory enforcement function of marijuana in several municipalities Staff is recommending one or two full time sworn police officers. The actual number will depend greatly upon the number and types of licensing the City decides upon allowing. Enforcement will be focused on monitoring compliance with the City's and the State's regulatory requirements for licensing, inventory control, transportation, and sale to underage individuals. This last point may involve such things as sting operations utilizing underage operatives and/or people with fraudulent identification documents.

Staff also recommends funding be allocated to the investigation and enforcement of black and gray market marijuana. Black market marijuana is currently prevalent in Grand Junction and Mesa County and local law enforcement resources are too limited to address the complaints of grows, use and sales. The funding of two police officers to investigate and enforce state law regarding black and gray market marijuana is, per Grand Junction Police Department leadership, critical to addressing this problem in Grand Junction. Arguably the legal marijuana industry should be very supportive of addressing those competing with their business through illegal means. Additionally, the community should be concerned with the loss of tax revenue when illegal sales continue.

CONCLUSION

Staff will be providing an overview of this memo and will be seeking specific direction on the items listed below. Staff welcomes additional questions and discussion on this complex issue. The information contained in this report is designed to facilitate discussion, not to provide a definitive recommendation. It is evident, based on the concerted research efforts of staff, that there is no definitive best practice in the realm of marijuana regulations, but rather that each policy choice can be clearly identified with a different goal or motivation. To this end, staff seeks direction from Council on the following four matters:

- 1) the license types that the Council would refer to the ballot;
- 2) the preferred approach to the development of proposed sales and excise tax rates;
- 3) the potential for earmarking anticipated revenues; and
- 4) the preferred timing for the development by ordinance of the regulatory structure for any marijuana related business considered for the ballot.

FISCAL IMPACT:

The fiscal impact will depend on the policy and regulatory framework.

SUGGESTED ACTION:

Discussion and Direction.

Attachments

1. Sample Recommendations Survey
2. Detailed Tax Information
3. November 30 City Council Workshop Staff Report
4. July 13 City Council Workshop Staff Report

Medical and Retail/Recreational Stores (i.e. dispensaries, sales locations)

All of the license types discussed below may occur as medical licenses or as retail (i.e. recreational) licenses. A municipality may allow only medical, only retail, both, or a mix of both for different license types. Marijuana Sales Licenses are authorized to sell marijuana to persons over the age of 21 and/or with a medical marijuana license, subject to maximum sale amounts. They may also sell infused products (edibles), ointments, balms, lotions and other topical products. They may only operate between the hours of 8 a.m. – midnight.

Option A: Allow for both retail and medical sales licenses provided:

- Limited to C-1, C-2, B-1, and B-2 zone districts.
- Buffering of 1,000 feet from any District 51 educational institution; 500 feet from CMU main campus, of any licensed childcare center; and 2,000 feet of any other licensed medical/recreational retail storefront.
- use-specific standards including limitations on signage and advertising, odor, and security.

Option B: Allow for both retail and medical sales licenses provided.

- Permits available for issuance no sooner than July 1, 2021.
- Limited to C-1, C-2, and MXOC zone districts.
- Cap of 7 stores.
- Prohibited in gateway areas including specific areas (TBD) such as along the 24 Road, Orchard Mesa and Horizon Drive gateways.
- Prohibited in Downtown.
- Buffering of 1,000 feet from any District 51 educational institution; 500 feet from CMU main campus, of any licensed childcare center; any place of worship, any public park or playground, and 2,000 feet of any other licensed medical/recreational retail storefront.
- Use-specific standards including limitations on signage and advertising, odor and security.

Option C: Allow for both retail and medical sales licenses provided:

- Limited to C-1 and C-2 and zone districts.
- Cap of 1 store per 5,000 people (per ACS currently 63,597, or 12.7 stores, to round up).
- Buffering of 1,000 feet from any District 51 educational institution; 500 feet from CMU main campus, 1,000 feet of any licensed childcare center; any place of worship, any public park or playground, and 2,000 feet of any other licensed medical/recreational retail storefront.
- Use-specific standards including limitations on signage and advertising, odor and security.

Option D: Allow for both retail and medical sales licenses provided.

- Permits available for issuance no sooner than July 1, 2021.
- Limited to C-1, C-2, B-2 and MXOC zone districts.
- 6 licenses available starting July 1, 2021 with one additional license available annually until reaching a maximum of one store per 7,500 people (Currently would limit to 8.47 stores based on ACS population of 63,597).
- No more than 2 licenses in B-2 zone district.
- Buffering of 1,000 feet from any District 51 educational institution; 500 feet from CMU main campus, of any licensed childcare center; any place of worship, any public park or playground, and 2,000 feet of any other licensed medical/recreational retail storefront.
- Use-specific standards including limitations on signage and advertising, odor and security.

And [optionally],

Addendum 1: Consideration should be given to allowing only medical licenses.

Addendum 2: Consideration should be given to allowing only retail licenses.

Cultivation Licenses

Cultivation licenses are granted to entities that cultivate, prepare, and package marijuana and transfer to marijuana to sales businesses, research facilities, and some other license types, but not to consumers. Marijuana cultivated by a retail cultivation license can only be transferred to other retail licenses, and vice versa for medical cultivation. *[Staff recommends Option B.]*

Option A: Do not allow Cultivation licenses.

Option B: Allow for Cultivation provided:

- Permits available for issuance no sooner than January 1, 2022
- Limited to I-1 and I-2.
- Indoor cultivation only.
- Buffering of 1,000 feet from any District 51 educational institution; 500 feet from CMU main campus, of any licensed childcare center.
- Use-specific standards for odor and security and visual buffering from high-visibility corridors such as Riverside Parkway, setbacks from residential uses.

Products Manufacturer Licenses

These businesses manufacture marijuana products that are intended for consumption in concentrated form for smoking, or for consumption other than by smoking, such as edible products, ointments, and tinctures. These businesses may vary widely in terms of their products and processes, and they may include hazardous uses which are currently subject to a Conditional Use Permit requirement. Medical products manufacturers may transact only with medical marijuana cultivation and sales licenses, and vice versa for retail. *[Staff recommends Option B.]*

Option A: Do not allow Products Manufacturer licenses.

Option B: Allow for Products Manufacturer licenses provided:

- Limited to I-1 and I-2.
- Use-specific standards for signage, odor, security, and safety.

Hospitality Business Licenses

Marijuana Hospitality Businesses are licensed to allow consumption of marijuana products on-site. These may be fixed locations that sell marijuana for on-site consumption, or that allow consumers to bring their own items for consumption. They may also be permitted as mobile premises. *[Staff recommends Option A.]*

Option A: Do not allow at this time.

Option B: Allow for non-mobile Hospitality establishments provided:

- Limited to C-1 and C-2 zone districts.
- Use-specific standards for signage, odor, security, and safety.

- Prohibited in Downtown.
- Buffering of 1,000 feet from any District 51 educational institution; 500 feet from CMU main campus, 1,000 feet of any licensed childcare center; any place of worship, any public park or playground, and 2,000 feet of any other licensed medical/recreational retail storefront.

Delivery Licenses

Such businesses are permitted to deliver marijuana and marijuana products from sales locations to residences. Such businesses must charge \$1 surcharge on each delivery that is remitted to municipality for local law enforcement costs. *[Staff recommends Option A.]*

Option A: Do not allow at this time.

Option B: Allow Delivery licenses for medical marijuana only, subject to further regulation.

Sales Tax Rate and Fees

A variety of approaches can be taken to taxation of marijuana and the recovery of licensing and administration costs through the collection of fees. The City will automatically apply its base City of Grand Junction Sales Tax of 3.25%, the State of Colorado Sales Tax of 2.90%, and the Mesa County Sales Tax of 2.37%. An additional 15% State Marijuana Sales Tax and 15% State Marijuana Excise Tax will be applied automatically.

Option A: The City should place an additional sales tax on all retail sales of marijuana, taxes rates should be set to:

- Maximized revenues by setting a tax rate that is at or above the rate imposed in nearby communities.
- Fully fund administration through licensing and renewal fees.
- Ballot question should include a maximum local sales tax of 15%, while tax rate should be set by ordinance.

Option B: The City should place an additional sales tax and excise tax on all marijuana related businesses, tax rates should be set to:

- Establish a business-friendly environment, including a minimum fee structure and a highly competitive tax rate, at or below that of nearby communities.

Excise Tax Rate and Fees

15% State Marijuana Excise Tax will be applied automatically. Excise taxes are applied to the first sale of the original agricultural product (i.e. flower, stems, trim from the cannabis plant).

Option A: The City should place an additional excise tax on all processing and cultivation, taxes rates should be set to:

- Maximized revenues by setting a tax rate that is at or above the rate imposed in nearby communities.
- Fully fund administration through licensing and renewal fees.

Option B: The City should place an additional excise tax on all processing and cultivation, taxes rates should be set to:

- Establish a business-friendly environment, including a minimum fee structure and a highly competitive tax rate, at or below that of nearby communities.
- Ballot question should include a maximum local excise tax of 15%, while tax rate should be set by ordinance.

Tax Revenue Usage

A range of uses for anticipated sales tax and excise tax revenue has been presented by City staff, the Marijuana Working Group, and community members at large.

Option A: All revenues go to the City's General Fund.

Option B: Taxes should be earmarked primarily for the administration, enforcement and/or youth drug education.

Option C: Taxes should be earmarked primarily for new services related to parks and recreation and/or education.

Option D: Taxes should be primarily earmarked for administration and enforcement, with additional revenue allocated to parks and recreation and/or education.

Option E: Other.

Detailed Tax Information – Peer Communities

Jurisdiction	# of Sales Licenses (Stores)	Marijuana Sales Tax Rate (Incl. General City Sales Tax)	Base City Sales Tax Rate	Special Marijuana Sales Tax Rate	Marijuana Excise Tax Rate	Marijuana Excise Tax Revenues 2019
Glenwood Springs	7	8.70%	3.70%	5.00%	5%	\$40,431.00
Ft. Collins	13	3.85%	3.85%	0.00%	0%	\$0.00
Longmont	4	7.03%	3.53%	3.00%	0%	\$0.00
Boulder	11	7.36%	3.86%	3.50%	5.00%	\$829,596.00

Jurisdiction	Population 2019	Total Sales Tax Revenue 2019	Local Share of 15% State Sales Tax	Cumulative Tax Revenues (base, sales, excise, state share back)	Sales Tax Revenue per Sales License	Cumulative Tax Revenue Per Sales License
Glenwood Springs	9,930	\$501,989.00	\$82,304.00	\$624,724.00	\$250,994.50	\$250,994.50
Ft. Collins	170,243	\$3,009,000.00	\$1,143,000.00	\$4,152,000.00	\$231,461.54	\$319,384.62
Longmont	97,261	\$659,687.00	162,032	\$821,719.00	\$164,921.75	\$205,429.75
Boulder	105,673	\$3,830,630.00	\$767,000.00	\$5,427,226.00	\$348,239.09	\$493,384.18

Jurisdiction	Cumulative Tax Revenue per Capita	Residents per License
Glenwood Springs	\$62.91	4,965
Ft. Collins	\$24.39	13,096
Longmont	\$8.45	24315.25
Boulder	\$51.36	9,607

1. Total Sales Tax Revenue 2019: The combined 2019 revenues generated from local base sales tax + any special marijuana sales tax

2. Cumulative Tax Revenues: The combined 2019 revenues generated from local base sales tax + special marijuana sales tax + the local share of the State 15% sales tax + excise tax

Columns denoted "Cumulative" include revenues in definition 2. in the calculation

Columns denoted "Total Sales Tax Revenue" include revenues in definition 1. in the calculation

Note that all data (licenses, populations, revenues, etc) is from 2019.



Grand Junction City Council

Workshop Session

Item #1.b.

Meeting Date: November 30, 2020

Presented By: Lance Gloss, Senior Planner

Department: City Clerk

Submitted By: Lance Gloss

Information

SUBJECT:

Update on Marijuana Working Group

EXECUTIVE SUMMARY:

At the September 14, 2020 workshop of the City Council, the Council solicited public input regarding the status of medical and recreational marijuana businesses in the City—businesses which are, at present, almost entirely prohibited. The discussion concluded with a request by Council that staff initiate a systematic review of steps available to the City staff and officials to reexamine and, if so directed, to revise the municipal regulatory framework for marijuana businesses. Council also directed staff to form a working group of balanced and sensible composition to guide decision-making over the course of this process. This approach has facilitated, and will continue to facilitate, the forward progress of staff through this complex topic.

To date, a team of approximately ten staff has assembled from the Community Development Department, Police Department, Fire Department, City Attorney's Office, City Clerk's Office, and City Manager's Office, with support from additional departments. This staff team is engaged in in-depth research across topics of licensing, land-use, education, public safety, taxation, law, and more. Staff has also formed the working group as requested, bringing the approximately 20 members together three times to engage this topic to date, with an anticipated five to seven additional meetings to come in December 2020 and January 2021. This staff team and community working group will each deliver recommendations to the City Council over the coming weeks and months, presenting best practices, possible courses of action, an anticipated ballot measure for April 2020, and other relevant information that will inform decision-making by the Council.

BACKGROUND OR DETAILED INFORMATION:

A common definition of marijuana is supplied in Article XVIII, Section 16 of the Colorado Constitution, which also establishes marijuana regulations effective statewide. The article defines marijuana as “all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including concentrate.” While both marijuana and industrial hemp are derived from the plant *Cannabis sativa* L., marijuana is distinguished from industrial hemp in that marijuana contains higher concentrations of delta-9 tetrahydrocannabinol (THC). The used portion of the *Cannabis sativa* plant also differs between marijuana and hemp. Marijuana is typically the flower-bud while hemp uses typically encompass stems, seeds, and flowers.

The legal background for marijuana businesses in the City of Grand Junction is complex, and is comprised of decisions made at the Federal, State, and Local levels including the decisions of officials and the results of ballot initiatives and petitions. A full summary of events leading to the extant legal conditions for marijuana businesses can be found in the attached memo prepared by the City Attorney’s Office. The present conditions can be summarized as follows. Federal regulations regard marijuana as an illegal, schedule 1 drug or controlled substance, and provide for criminal punishment of those knowingly in possession of the drug. State regulations regard marijuana as legal for recreational use by individuals over the age of 21, and legal for medical uses subject to licensing and approvals. The City of Grand Junction enforces the marijuana regulations found at the state level, and does not prosecute possession or cultivation of marijuana, nor the distribution of medical marijuana by licensed caregivers, to the extent that these activities are protected by the Colorado Constitution. The only marijuana-related businesses that are permitted within City limits are testing facilities, which do not sell or otherwise distribute marijuana.

Currently, City of Grand Junction staff and community members, including the Marijuana Working Group, are researching, reviewing, discussing and preparing a recommendation to assist in the development of an ordinance on the taxation, permitting and regulation of marijuana for the City Council’s consideration for a Spring 2021 ballot measure. The ballot measure could include a proposal to repeal a 2011 moratorium on marijuana businesses and establish a rate of taxation. Repealing the moratorium would allow City Council to regulate any and all marijuana businesses by ordinance.

A discussion regarding a possible spring election question is anticipated for mid-December. City Council is projected to review and vote for/against adoption of the ballot language by January 26, 2021, if there is desire to have a question in the spring. An intergovernmental agreement between the City and Mesa County for the regular

municipal election must occur on or before January 26, 2021 which is 70 days before election. The ballot certification must occur 60 days before the election, which date is February 5, 2021. An ordinance regarding business licensing, land-use permitting, and enforcement related to marijuana businesses will be proposed subsequent to the passage of the ballot measure.

Summary of Measures and Components

The City's effort to review marijuana regulations involves four major components: a community working group; a staff team; a ballot measure; and, depending on the outcomes for these three components, an ordinance advancing new regulations on marijuana-related businesses.

1) *Working Group*

The working group is comprised of residents, business owners and leaders, and marijuana industry professionals. The goal of the working group, made up of 15-20 individuals, is to provide a recommendation to City Council regarding the types of—and/or limitations on—marijuana businesses that should be allowed in the City of Grand Junction. The recommendation will be formulated through discussions held during approximately eight meetings over the next three months.

2) *Staff Team*

The staff team is comprised of City of Grand Junction staff from the Community Development Department, Police Department, Fire Department, City Attorney's Office, City Clerk's Office, and City Manager's Office. The role of the staff team is to bring information to the community working group for review, discussion, and recommendation regarding the taxation, permitting, and regulation of marijuana for the City Council's consideration.

3) *Ballot Measure*

The City Council has initially expressed the intent to bring a ballot measure to voters in April, concerning whether marijuana businesses should be permitted and taxed in Grand Junction. This could include a proposal to repeal the 2011 moratorium on medical marijuana businesses and establish a rate of taxation. A ballot measure may also include earmarking of the revenue for certain City functions.

4) *Regulations (Ordinance)*

An ordinance establishing the regulatory framework for business licensing, land-use permitting, and enforcement related to marijuana businesses will be brought forward for City Council's consideration.

Next Steps

The staff team involved in this process will continue to examine the range of regulatory options for marijuana businesses, and will continue to facilitate the development of a recommendation on this topic by the community working group. The goals and potential products of this effort being relatively established, this work may continue in essentially the direction in which it is already aimed. That said, the staff team remains flexible to the direction of the City Council regarding how best to pursue this research, and will change course as directed. One possible set of actions that has been discussed at various levels is the provision of a public set of data and review materials that may be put forward to inform the public and facilitate reasoned debate on the potential merits and negative impacts of changes to the City's marijuana regulations. A similar product could be produced expressly for the review of Council, along with summaries of regulations in comparable jurisdictions, detailed legal or technical examinations of any particular aspects of this line of inquiry that the Council deems important, or similar. The staff team certainly embraces opportunities for public dialogue at all stages of research and recommendation, and welcomes any decision by Council that would expand or facilitate public engagement in this complex topic.

FISCAL IMPACT:

N/A

SUGGESTED ACTION:

For update and City Council discussion.

Attachments

None



Grand Junction City Council

Workshop Session

Item #1.c.

Meeting Date: July 13, 2020

Presented By: Greg Caton, City Manager

Department: City Manager's Office

Submitted By: Greg LeBlanc, Sr. Asst. to the City Manager

Information

SUBJECT:

Marijuana Discussion

EXECUTIVE SUMMARY:

Marijuana sales in Colorado started following the passage of Colorado Amendment 64, an initiative ballot measure to amend the Constitution of the State of Colorado, outlining a statewide drug policy for cannabis, in 2012.

A common definition of marijuana is supplied in Article XVIII, Section 16 of the Colorado Constitution, which also establishes marijuana regulations effective statewide. The article defines marijuana as “all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including concentrate.” While both marijuana and industrial hemp are derived from the plant *Cannabis sativa* L., marijuana is distinguished from industrial hemp in that marijuana contains higher concentrations of delta-9 tetrahydrocannabinol (THC). The used portion of the *Cannabis sativa* plant also differs between marijuana and hemp. Marijuana is typically the flower-bud and hemp typically encompass stems and seeds.

There are three primary elements of the marijuana industry: growing; processing; and retail sale. There is also an emerging fourth element: public consumption. All are regulated at a state-level, but the state also enables local jurisdictions to promulgate their own regulations.

This item is intended for discussion and possible direction by Council. As a part of the

discussion, a representative from the Marijuana Enforcement Division (MED) will present on the topic.

BACKGROUND OR DETAILED INFORMATION:

A common definition of marijuana is supplied in Article XVIII, Section 16 of the Colorado Constitution, which also establishes marijuana regulations effective statewide. The article defines marijuana as “all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including concentrate.” While both marijuana and industrial hemp are derived from the plant *Cannabis sativa* L., marijuana is distinguished from industrial hemp in that marijuana contains higher concentrations of delta-9 tetrahydrocannabinol (THC). The used portion of the *Cannabis sativa* plant also differs between marijuana and hemp. Marijuana is typically the flower-bud and hemp typically encompass stems and seeds.

State laws distinguish between marijuana for recreational (or “retail”) and medical (or “medicinal”) uses. Please note that Medical Marijuana is regulated separately under Article XVIII, Section 14 of the Colorado Constitution. Actual marijuana products, as well as the processes involved in growth, processing, and sale of same, are essentially the same for medical and recreational marijuana. Many Colorado counties and municipalities established separate ordinances for the regulation of medical marijuana prior to legalization of recreational marijuana in the state. Some jurisdictions do allow medical marijuana related businesses but do not allow recreational marijuana businesses. Other jurisdictions regulate recreational and medical marijuana with minimal differences in zoning and permitting.

Elements of Marijuana-related Business – There are three primary elements of the marijuana industry: growing; processing; and retail sale. There is also an emerging fourth element: public consumption. All are regulated at a state-level, but the state also enables local jurisdictions to promulgate their own regulations. The state of Colorado through their Department of Revenue performs “seed-to-sale” tracking of all marijuana produced for retail sale in the state using a system called METRC. METRC requires that all marijuana be assigned and accompanied by a tracking tag called an RFID at all stages in the process. No marijuana grown outside the state can be sold in the state.

Growing – State laws distinguish medical grows from recreational grows, though the actual growing processes are generally identical. Marijuana can be grown with natural light outdoors, with artificial light indoors, or with both kinds of light in a “mixed-light” grow. Such grows, when related to processing and retail, are typically large-scale. These large, intensive grows may have a significant draw on electrical, water, and other utility services, and in some parts of the state may have as many as 15,000 plants indoors or involve dozens of outdoor acres. The state enables jurisdictions to

regulate marijuana grows for retail purposes. These require a Retail Marijuana Cultivation License from the state, and typically also require a Local License issued by the local jurisdiction.

However, per the Colorado Constitution and indifferent of local regulations, an individual over age 21 can grow up to six plants, up to twelve per residence, with restrictions on public visibility and accessibility by children. These homegrown products cannot be sold on the retail market. A primary distinction between the medical and recreational marijuana industries is the “Caregiver” function. A medical marijuana patient can designate another resident as a Caregiver; the Caregiver may then be allowed to grow an additional six plants allotted to that patient. A caregiver may grow plants for up to five patients plus themselves, for a total of 36 plants; a waiver extending the plant count may be granted by a medical professional, but this happens rarely. Occasionally, groups of Caregivers have created cooperatives to combine their plant totals at a single growing location. For several years this resulted in hundreds of plants to be grown at a site without regulation by the local jurisdiction, but a 2017 law limited the right of per-person medical and recreational marijuana grows to be combined in a single location. Jurisdictions cannot infringe upon the aforementioned home-grow and Caregiver rights, and for this reason the City has approved site plans and change of use applications related to medical marijuana grow operations in the City.

Processing – Marijuana is typically processed before consumption into a variety of forms. Processing of raw plant material into marijuana for consumption as smoke or vapor can be limited to the trimming and curing of marijuana flower-buds, which is generally allowed at cultivation facilities. In land use regulations, “processing” typically refers to more intensive procedures used to make oils, waxes, products intended for consumption as food and drink (marijuana “edibles”), tablets, sprays, liquid extracts, or topical creams. All such processing facilities require licensing at the state level and can be regulated by local jurisdictions.

Certain marijuana-related land uses can be subsumed under the processing category but are also regulated separately by certain communities. Examples include marijuana research and development facilities and marijuana testing facilities. Testing facilities may be a particularly important concern for Grand Junction, where the hemp industry has already indicated the need for a State-approved testing facility on the Western Slope.

Retail Sales – After processing, marijuana is sold directly to consumers in specialized retail locations, rather than as a product in a general retail store. These locations are usually recognizable as a store or shop, often called a “dispensary” whether medical or recreational in nature. Retail sales of marijuana also require state licensing and require further licensing requirements in most municipalities. These premises have security

and surveillance requirements under state law. Products are subject to safe handling requirements and all sales are managed by an employee who may only transact in a form that meets “closed container” requirement, akin to requirements for alcohol sales.

Consumption – A fourth, emerging dimension of the marijuana industry encompasses sites for public consumption. Generally, marijuana must be consumed on private property and without generation of nuisance; however, as of January 1, 2020, Colorado has legalized businesses that facilitate consumption in some public places, in and out of doors. Specifically, “marijuana hospitality establishments” have been introduced to counteract problems with public consumption by tourists. Licensed establishments for public consumption of marijuana are generally equivalent to bars where alcohol is consumed. These may be allowed for sections of hotels, and under state law these may even include “mobile premises” such as tour buses. These uses can be regulated by local jurisdictions.

Marijuana Regulations in Colorado Communities – Other communities in Colorado have already adopted marijuana regulations. These communities exhibit a range of regulatory approaches, with some regulating only one or some of the elements of marijuana-related businesses. Examples include:

- The Town of Palisade conditionally permits recreational and medical marijuana sales in a range of zone districts, and conditionally allows cultivation and processing in the same zones as well as in their more agricultural zone districts. By contrast, the City of Fruita and Mesa County passed Ordinances similar to the one passed by the City of Grand Junction, prohibiting all uses related to recreational marijuana as well as the sale of medical marijuana.
- The City of Glenwood Springs conditionally allows cultivation and sale in a range of mixed-use, commercial, and industrial zone districts with a special use permit.
- The City of Delta conditionally allows a full range of medical marijuana land uses but does not allow any recreational marijuana land uses.
- The City of Montrose does not allow any medical marijuana or recreational marijuana land uses except for those rights to personal cultivation and consumption protected by the Colorado Constitution.

Other regulations can be compared from outside Western Colorado. The City of Pueblo conditionally allows marijuana-related land uses except for retail sales. By contrast, Pueblo County has allowed retail sales, growing, and processing in several zone districts, leading to a proliferation of marijuana retail at the edge of the incorporated city limits. The State of Utah allows marijuana for medical purposes only, including medical marijuana dispensaries. Utah does not allow land uses related to recreational marijuana, and enforces a criminal penalty for cultivation, consumption, and sale.

Overall, most major Colorado metropolitan areas have allowed marijuana-related

businesses while many smaller communities have not. As of January 2019, at least 106 Colorado jurisdictions have allowed recreational and/or medical marijuana businesses, 77 of these being municipalities (less than 30% of the total 270 municipalities in the state). Denver, Colorado Springs, Fort Collins, and Boulder are among them. The total number of marijuana businesses in the state has accordingly increased. As of April 1, 2020, there are 685 licensed retail recreational cultivators and 463 licensed retail medical cultivators, as well as 590 licensed retail recreational stores and 435 licensed retail medical stores.

Enforcement – While the Marijuana Enforcement Division (MED) regulates the licensing from the state perspective, a separate license is recommended or in some cases required by ordinance to operate such an establishment within city limits. The Grand Junction Police Department recommends that the perception of increased criminality be addressed and how it could affect our local community. The Department is working with police agencies across the state to study the further understand the issue. Other considerations include whether initial parameters are set regarding allowing cultivation operations or just retail within city limits. Regardless, law enforcement will need to understand opportunities and challenges regarding criminal activity, licensing, and locations of operations.

Some law enforcement agencies across the state specifically earmark revenue from marijuana sales for law enforcement personnel to ensure compliance is maintained within the businesses. This is not the role of the MED, but rather local law enforcement.

Zoning for Marijuana-related Land Uses – Land use and zoning regulations are important to most jurisdictions' approaches to marijuana-related businesses. Statewide, many communities that allow marijuana sales identify retail sales of marijuana as allowed or conditionally allowed uses in a range of commercial and industrial zone districts. Processing facilities are typically allowed or conditionally allowed in commercial and industrial zone districts. Growing operations are typically allowed in these same districts, and sometimes in rural and/or agricultural residential districts. Most marijuana-related land uses not allowed in residential zones, except for personal and medical grows protected by state constitutional law. Moreover, the question of whether marijuana-related uses are considered desirable in a zone district depends heavily on local conditions. Some communities have concentrated marijuana sales in blighted districts to try to revitalize those districts. Other communities have attempted to spread marijuana sales throughout the community or to separate marijuana sales from other uses that may be considered incompatible.

One strategy for limiting the total number of marijuana businesses in the community is to establish a quota or numerical limit, either citywide or pertaining to various neighborhoods or districts. For example, the City of Palisade has established a

maximum of two marijuana sales locations. Entire states have also established quota systems, such as Maine, which is divided into eight districts allowing one medical marijuana dispensary location in each district. Those with quotas usually resort to a lottery system for issuance of a limited number of permits.

A common strategy for controlling location of marijuana-related businesses is to establish “marijuana free districts” or “exclusion zones.” In such a zone or district (typically effected as an overlay zone), no marijuana-related business may operate. This strategy has been used by many communities to keep marijuana businesses out of downtowns; the strategy has been applied to a seven-block area in downtown Palisade. Another common strategy, which is widely used in California and functions inversely to marijuana exclusion zones, are so-called “green zones” where marijuana-related businesses are specifically allowed. These green zones may have different layers for growing, processing, and sales. Usually, communities with green zones do not allow marijuana-related business outside of the green zone.

Marijuana cultivation is typically regulated separately from other agricultural uses, such that Land Use Code definitions associated with agriculture usually must be amended. Grows are typically an industrial activity, rather than an agricultural activity, and are often allowed or conditionally allowed in industrial zone districts. Marijuana cultivation may also pose challenges for various utilities. Heavy and intermittent electrical demand, high water consumption, and potential contamination of water with significant fertilizer runoff have all posed challenges for utilities in various communities. An important consideration in regard to growing of marijuana is whether to allow indoor grows only, or to allow outdoor or mixed-light grows. Allowing outdoor growing operations typically requires substantial screening standards to reduce visual impacts and makes control of odor nuisance much more difficult. Another challenge attendant to outdoor grows is the difficulty of controlling pollen from marijuana plants. Pollen from marijuana plants can fertilize hemp plants, such that THC quantities in the hemp exceed allowed limits and the crop must be destroyed.

Whereas marijuana cultivation is usually regulated very differently than other agriculture, regulations for the processing of marijuana generally align with both the overall zoning standards for industrial uses. In particular, many processing uses require hazardous materials of various kinds. Like marijuana cultivation, processing is generally subjected to extra measures for control of odor nuisance.

Further, as the marijuana industry has evolved, some businesses have specialized while others have sought to vertically integrate. Thus, a community that allows marijuana-related uses can expect to see requests for combined facilities for growing, processing, and sales, or any combination thereof, in addition to requests for businesses specializing in only one of these elements of the industry. Challenges may accordingly arise if zoning for growing, processing, and retail do not adequately

overlap.

Mitigating negative impacts of marijuana related businesses may also present an equity issue. Prior to legalization, a large and well-documented disparity in marijuana-related criminal charges created a disproportionate negative impact on low-income people and people of color. Similarly, a growing body of research indicates that the negative impacts of legal marijuana are also felt by racial minorities and poor neighborhoods. This is the case with many LULUs, or “locally-unwanted land uses,” such as liquor stores, homeless services, rehab centers, and prisons. Land use and zoning regulations should be designed to prevent the discriminatory impact of noise, odor, light, traffic, volatile organic compounds (VOCs), air quality, and other nuisance on the City’s minority and low-income residents. This knowledge should inform zoning decisions, including decisions regarding the location of “green zones” or “exclusion zones” should the utilization of these zoning tools be considered.

Use-Specific Standards – In addition to general zoning for marijuana businesses, other standards impact location. A Colorado State standard requires that no dispensary be within 1000 feet of a school, though local governments may modify this distance. Some communities establish distance requirements between marijuana businesses and other uses, possibly including hemp grows as alluded to above. Other potential marijuana-related nuisances may be mitigated through use-specific standards. For example, parking requirements per square foot may be higher than for other retail uses, especially in communities with limits on the number of marijuana retail locations. Many municipalities also establish limits on the floor area of a retail location, to prevent the establishment of very large marijuana stores and to limit the potential impacts on real estate market under certain conditions. Other common performance standards include limits on the visual and written references to marijuana on signage; window opacity standards; odor control requirements beyond general municipal standards; and site improvements beyond general municipal requirements.

This item is intended for discussion and possible direction by Council. As a part of the discussion, a representative from the Marijuana Enforcement Division (MED) will present on the topic.

FISCAL IMPACT:

A fiscal impact could be prepared based on direction from City Council.

SUGGESTED ACTION:

This item is intended for discussion and possible direction by Council.

Attachments

1. Presentation