

To access the Agenda and Backup Materials electronically, go to www.gjcity.org



**PLANNING COMMISSION WORKSHOP AGENDA
VIRTUAL MEETING**

THURSDAY, JANUARY 7, 2021 @ 12:00 PM

This meeting will be conducted as a [VIRTUAL MEETING](#)

View the meeting live or later at www.GJSpeaks.org

Call to Order - 12:00 PM

1. Comprehensive Plan Update
2. Marijuana Business Regulations

Other Business

Adjournment



Grand Junction Planning Commission

Workshop Session

Item #1.

Meeting Date: January 7, 2021

Presented By: David Thornton, Principal Planner

Department: Community Development

Submitted By: Dave Thornton, Principal Planner

Information

SUBJECT:

Comprehensive Plan Update

RECOMMENDATION:

EXECUTIVE SUMMARY:

Brief summary of plan revisions based on City Council's December 16th adoption of the 2020 One Grand Junction Comprehensive Plan.

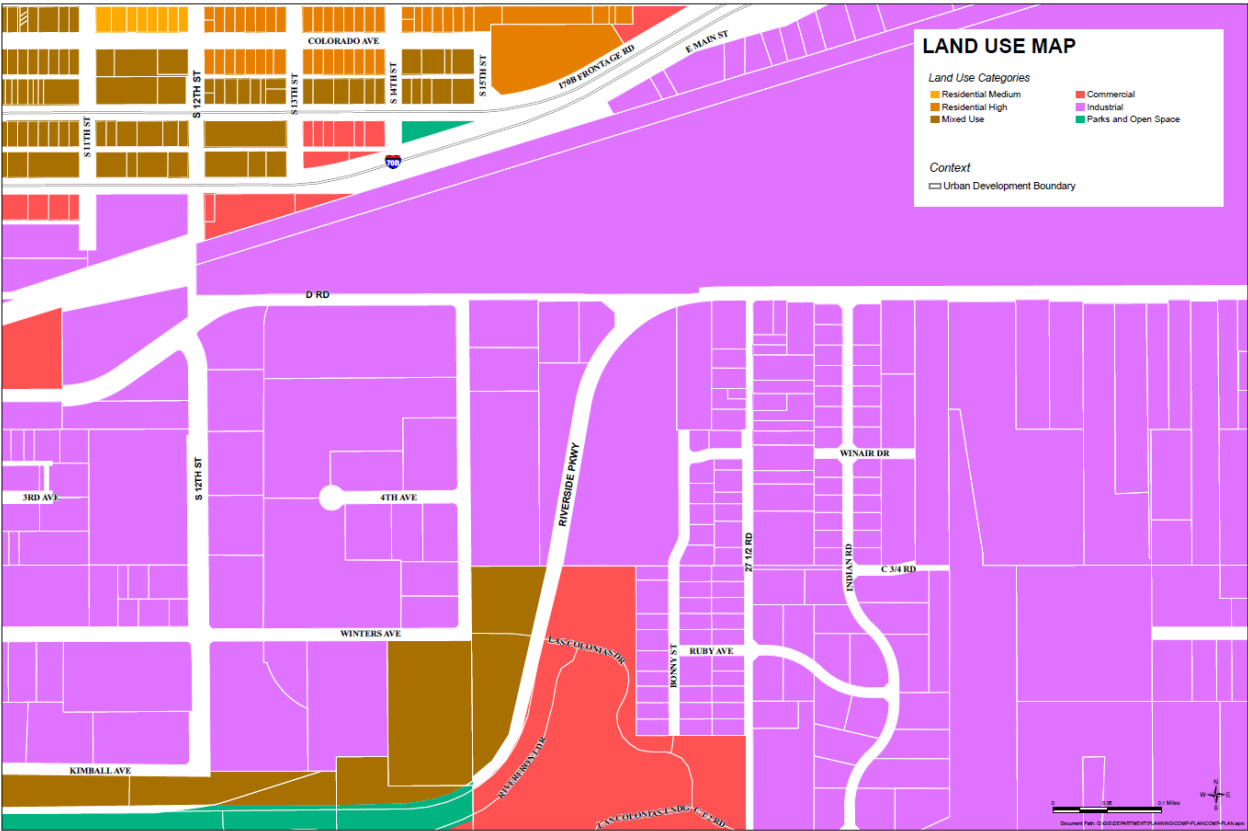
BACKGROUND OR DETAILED INFORMATION:

SUGGESTED MOTION:

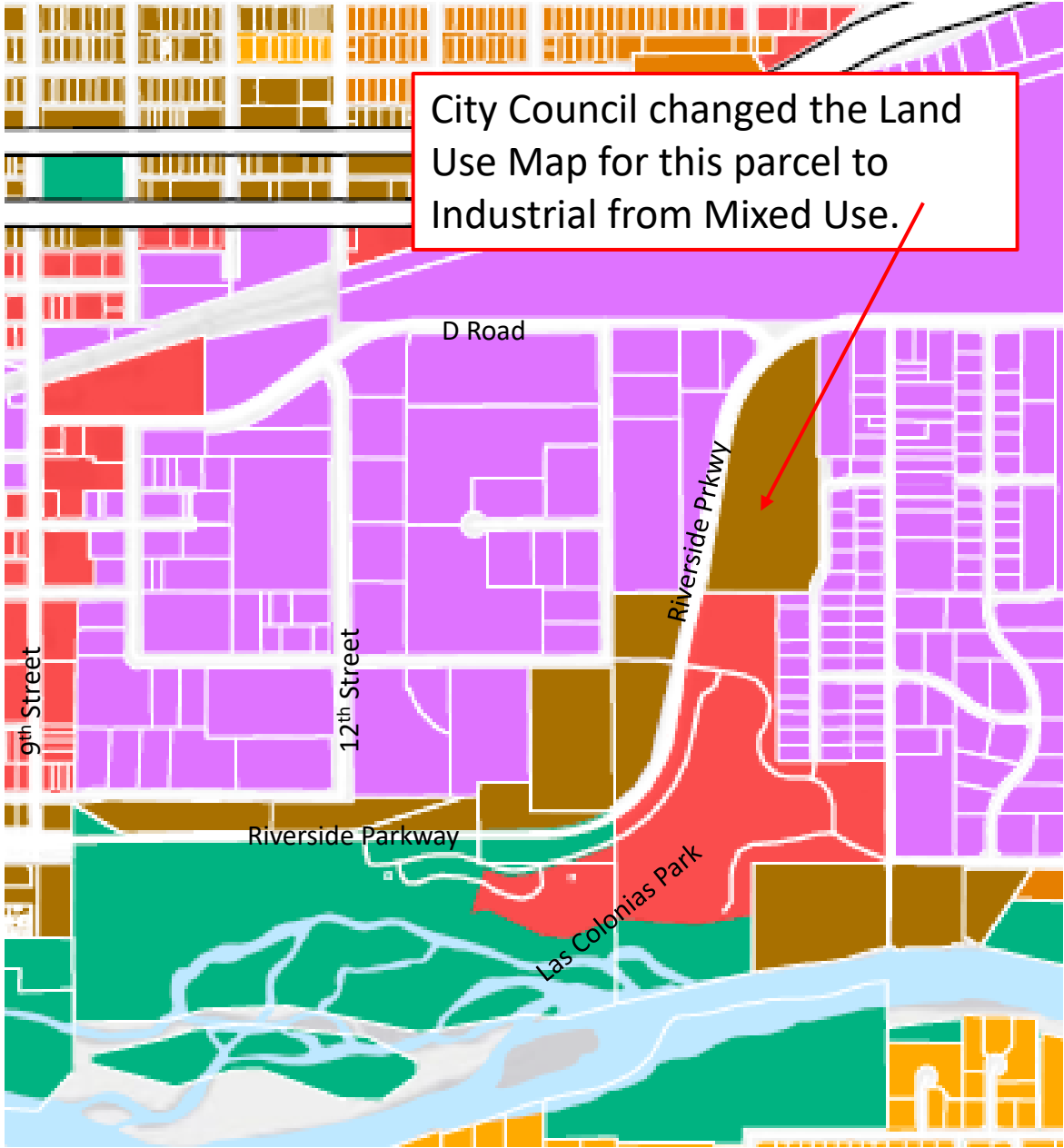
Attachments

1. City Council changes to adopted Plan
2. Council Approved - Comprehensive Plan 2020 Revisions 12.16.2020

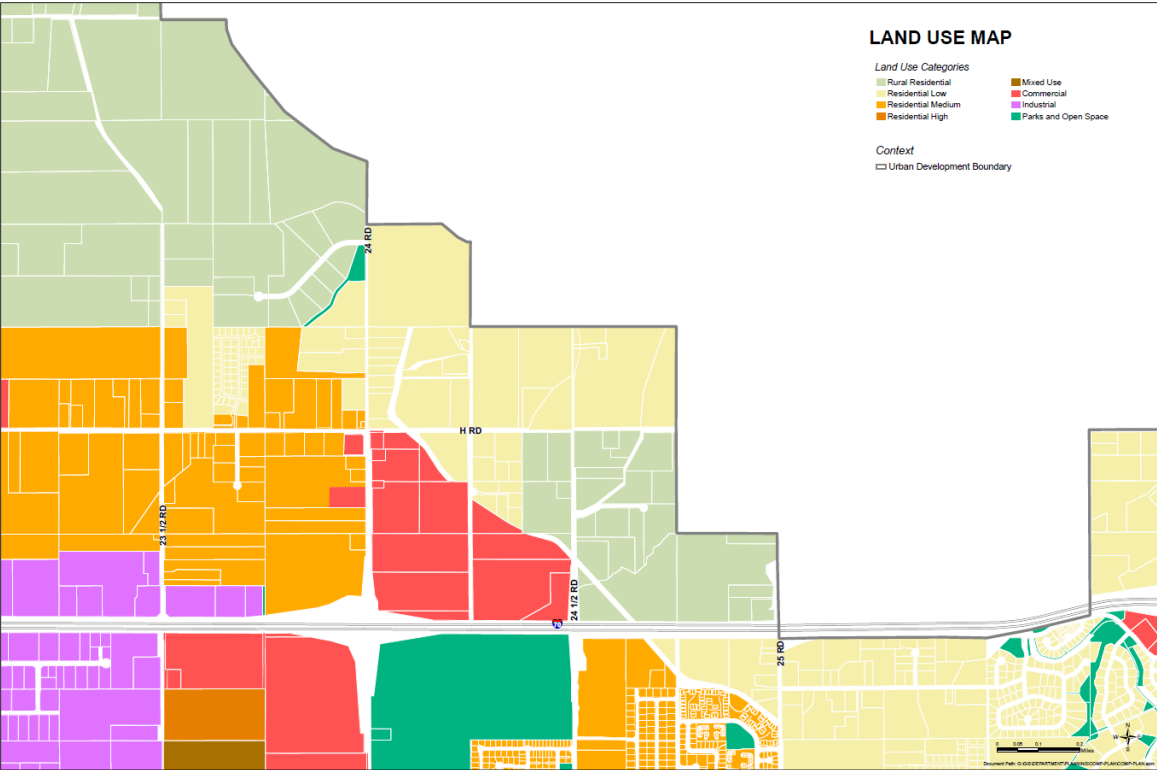
City Council approved Changes to LU Map



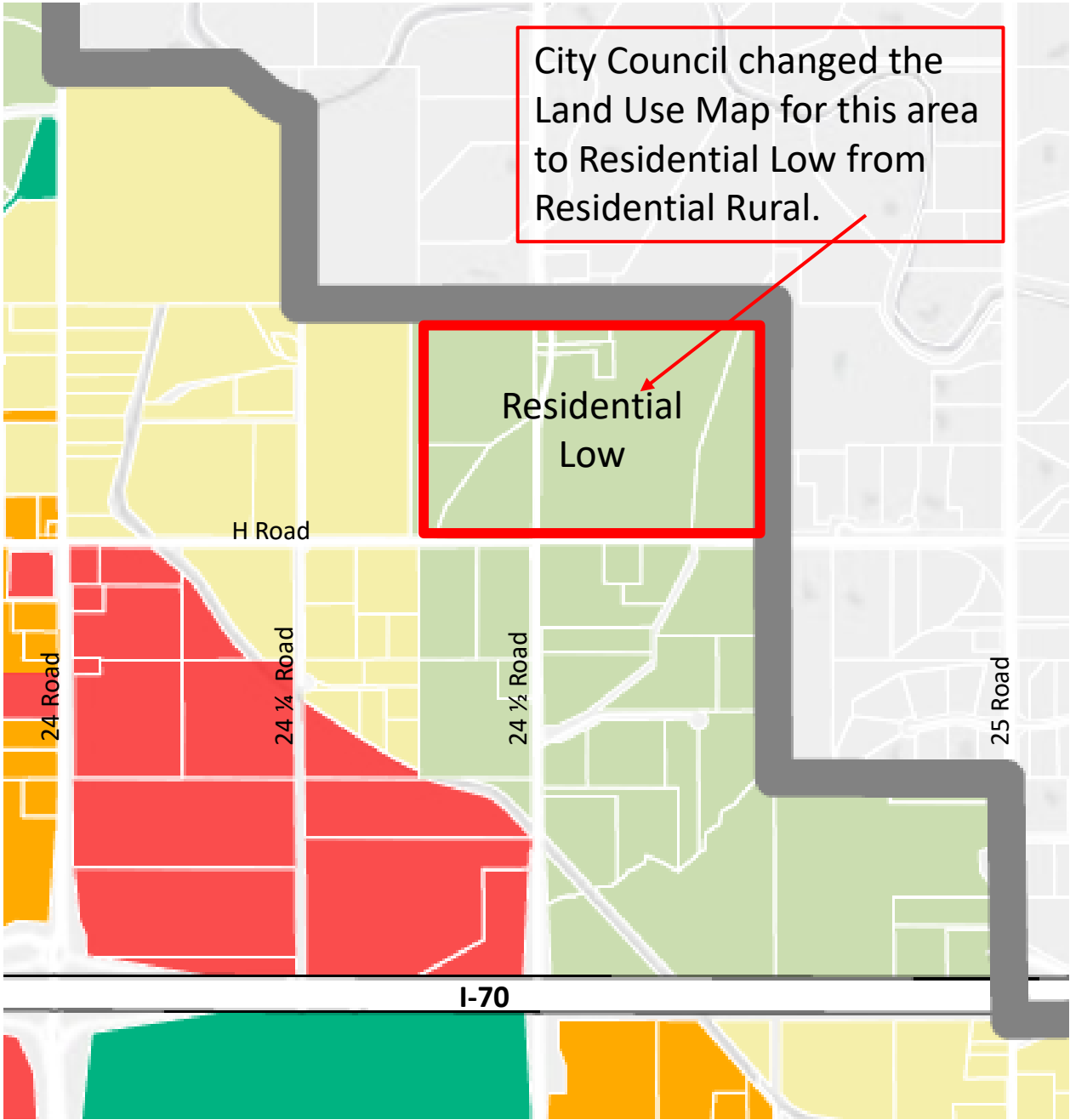
Revised Land Use Map **approved** by City Council



City Council approved Changes to LU Map



Revised Land Use Map **approved** by City Council



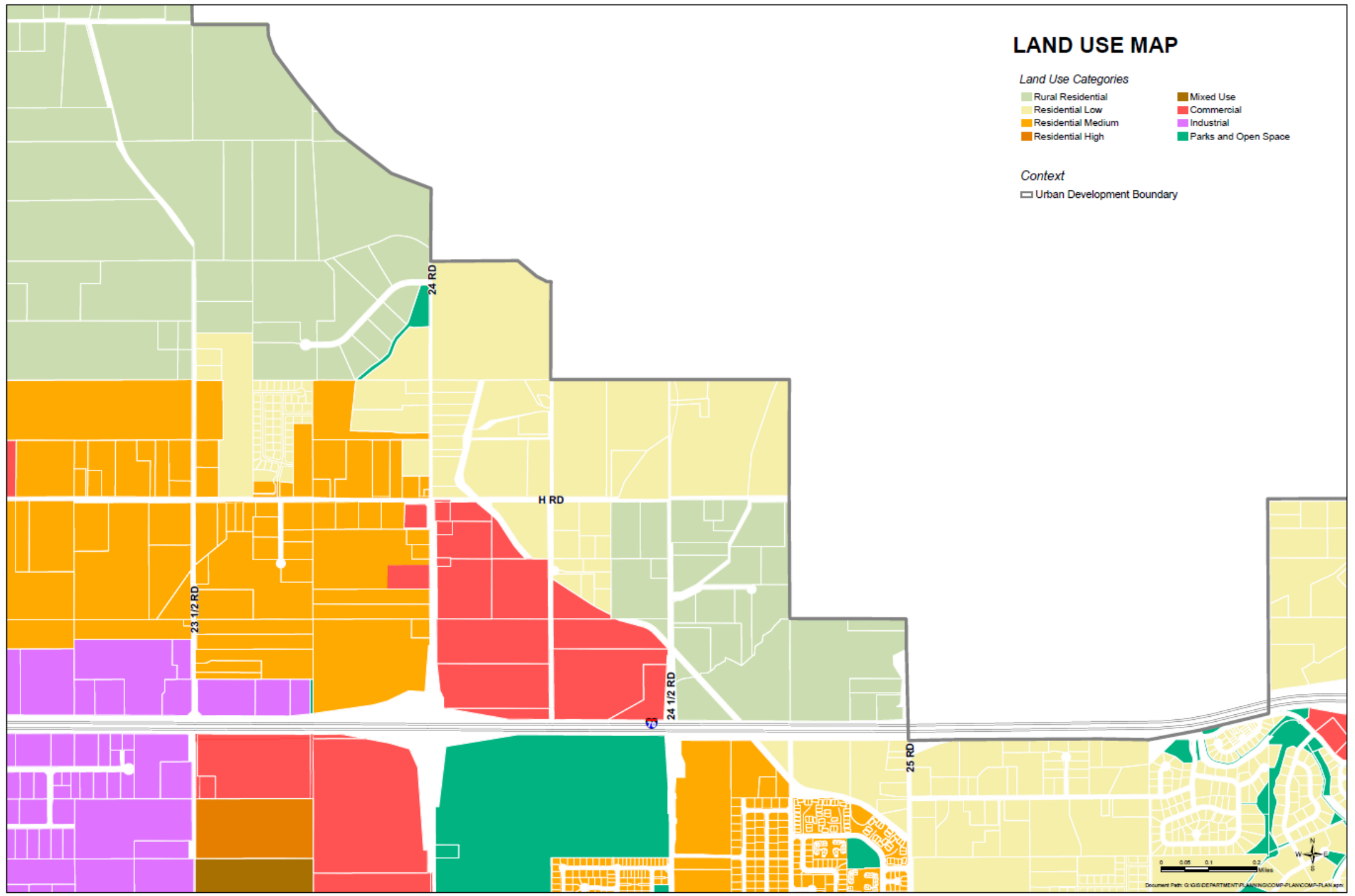
LAND USE MAP

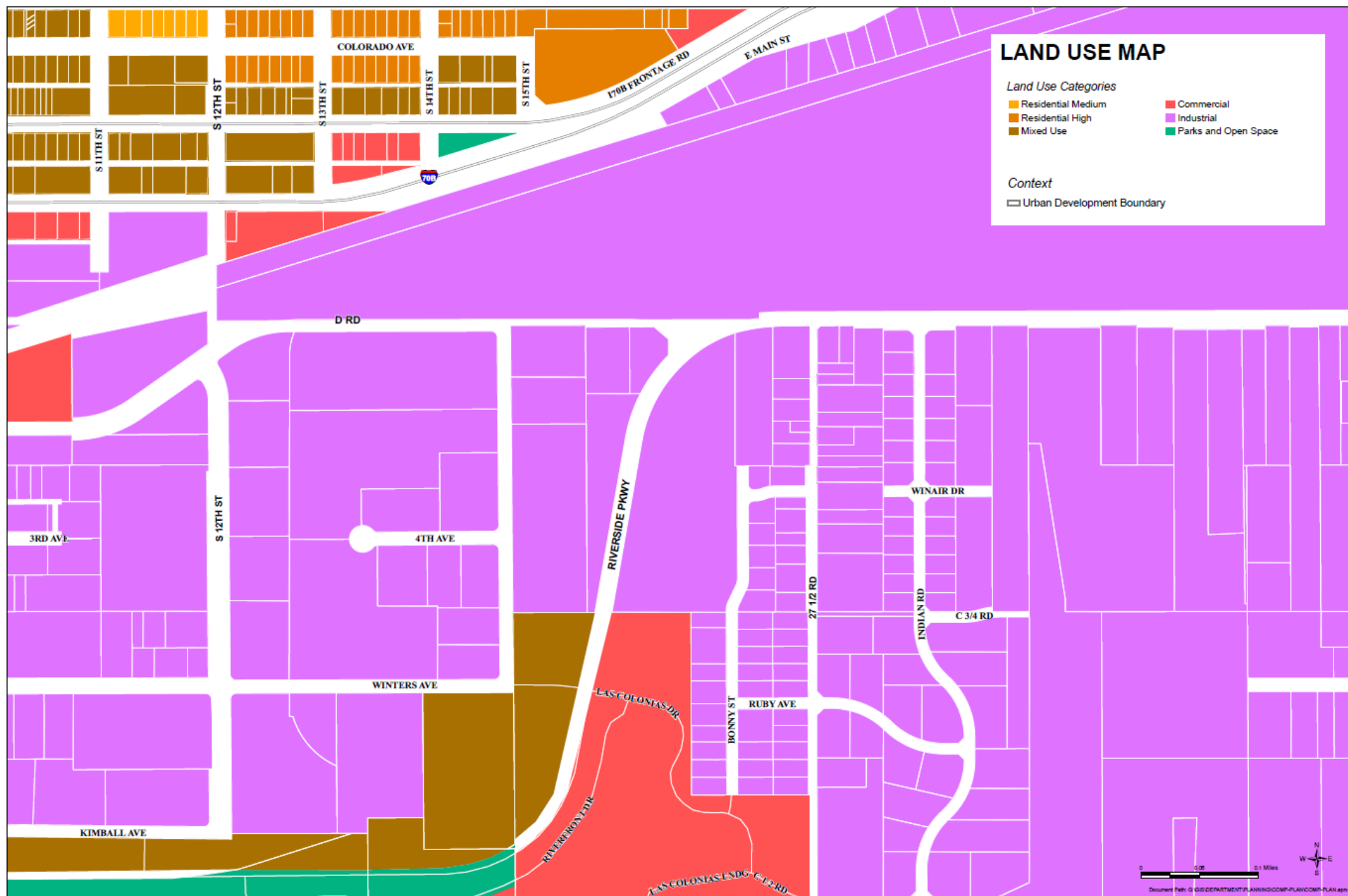
Land Use Categories

- | | |
|--|--|
|  Rural Residential |  Mixed Use |
|  Residential Low |  Commercial |
|  Residential Medium |  Industrial |
|  Residential High |  Parks and Open Space |

Context

-  Urban Development Boundary



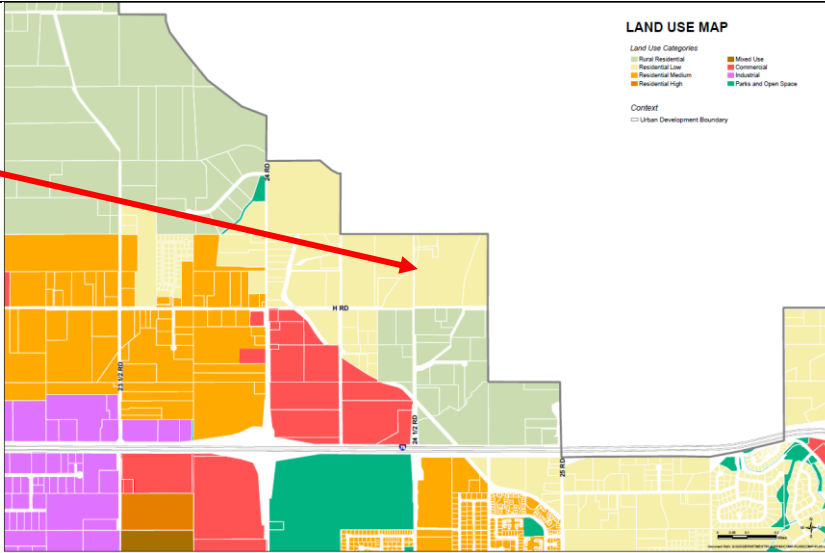
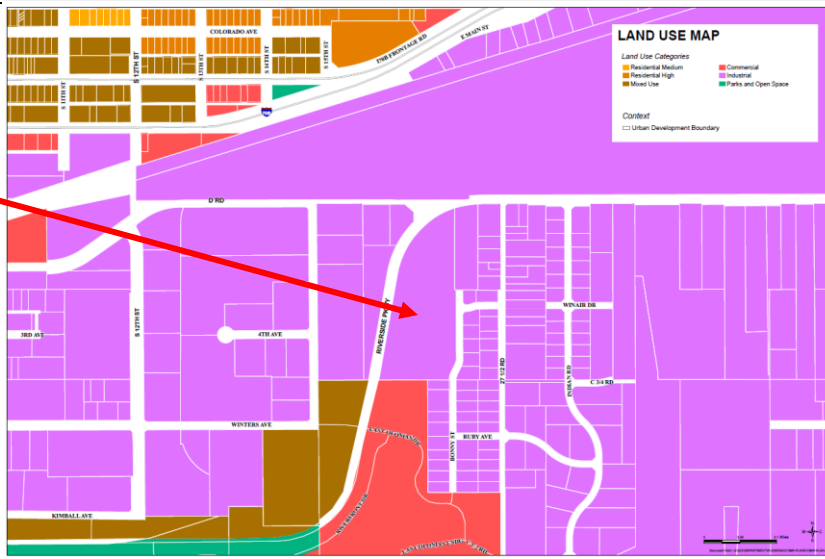


City Council Approved Plan Changes Summary Table

Page	Comment	Response	Action
14	Flagged: Black Tuesday.	Error	Change to Black Sunday
18	How does Leave no Trace relate to a. and b.	a. and b. could be moved to better align with relevant goal	Move a. Agritourism and b. Water to 4. On Page 17 making them strategies c. and d. under Goal: "Support the expansion of a responsible and sustainable tourism industry..."
18	f. Add a comma after regional transportation	Punctuation	Add comma after both transportation and maintenance
31	Label Mariposa Drive on map	Not all roads are labeled but can be added	Add map label
33	Add strategy about FTZ.	Foreign Trade Zones are highlighted in Capitalizing on Success section (page 16). Also included as item ET-3B in implementation Matrix "Continue to support efforts in securing a Foreign Trade Zone." Strategy can be added on page 33 under Goal 3 to address Foreign Trade Zones.	Add: 3.f. Foreign Trade Zone. Support and continue to collaborate on efforts to secure a Foreign Trade Zone.
41	Change legend from RidgelineDevRestrictions to Ridgeline Development Restrictions	Can be changed	Change legend from RidgelineDevRestrictions to Ridgeline Development Restrictions
45	Change "with passage of a First Responder Sales Tax (Measure 2B) in April 2018 to 2019	Typo	Change 2018 to 2019
45	Change voccur to occur	Typo	Change to occur
48	Underlined "City leaders regularly use the Comprehensive Plan as a tool. Change guides to	Provided information at workshops and through memo regarding how the plan should be utilized. The vision and strategies of the Comprehensive Plan should inform the City's work and priorities. The matrix could replace the strategic plan, but most	Change "guides" to "informs"

	information. In “It guides the development of the City Council’s Strategic Plan.”	communities will use the Comprehensive Plan to inform the creating of the 2-year strategic plan – that is what staff’s recommendation is at this time. The plan does shape direction for the City and should be considered by future councils as it is the guiding document for the City – until replaced.													
49	Circled “Incorporate” in Strategy 1.a. Use the Plan. Suggested change to make consistent with intention to “inform” strategic plan, etc.	This language could be made more consistent with recommended change (see 48 above) to change word choice to “informs.” Currently written as a. Use The Plan. Incorporate the guiding principles, goals, policies and implementation strategies adopted as part of the Comprehensive Plan into the City’s Strategic Plan, budgeting (including CIP), and decision-making at all levels to promote consistency and continuity as elected official and staff change over time. Can be changed to: “<u>Utilize</u> the guiding principles, goals, policies and implementation strategies <u>to inform the development of</u> the City’s Strategic plan budgeting (including CIP), and decision-making at all levels to promote consistency and continuity as elected official and staff change over time.	Change. 1.a. “Incorporate to “Utilize” and add “to inform the development of” see complete text in column to the left.												
54	Change DOLA to State Demographer under Changing Population	Clarification. The State Demography Office is a division within the Colorado Department of Local Affairs.	Change DOLA to State Demographer												
54	Question regarding growth projections and Graph Label (Grand Junction vs. Mesa County)	Based on the comments and need for clarifications staff recommends the population numbers reflect only a 20-year horizon versus the 30 year as currently shown on the Population Projects (2017-2050) graph. The graph will be refined to reflect State Demographer’s growth projections as follows: <table border="1"> <thead> <tr> <th>POPULATION</th><th>2020</th><th>2030</th><th>2040</th></tr> </thead> <tbody> <tr> <td>Grand Junction</td><td>65,244</td><td>74,504</td><td>87,020</td></tr> <tr> <td>Remainder Mesa County (not including Grand Junction)</td><td>156,262</td><td>179,410</td><td>210,703</td></tr> </tbody> </table>	POPULATION	2020	2030	2040	Grand Junction	65,244	74,504	87,020	Remainder Mesa County (not including Grand Junction)	156,262	179,410	210,703	Modify text and graph as shown in Response column.
POPULATION	2020	2030	2040												
Grand Junction	65,244	74,504	87,020												
Remainder Mesa County (not including Grand Junction)	156,262	179,410	210,703												

58	Clarification between Zoning Districts and Land Use Designations	A land use designation does not impact the current use of a property. A designation does not impact the future use of a property either. When a property seeks a new zoning district the City is required to ensure the zoning district works to implement the land use designation as shown on the Land Use Map (59). More information about how these work together can be found in the Plan on page 58 under Relationship to Existing Zoning, and How to Use the Land Use Plan.	Informational only.
88	A comprehensive update will generally take place every seven to ten years unless otherwise directed by Council. Comment: “too long – around 5 years would be best.”	It is best practice to check in between 5 and 7 years on the plan to ensure that it continues to align with the community’s vision and priorities and to make sure it is still relevant.	Change to “...every five to seven years unless...”
89	Circled “A minor amendment will be approved if the City Council makes specific findings..... Need clarification about how a policy/goal might be amended and Code criteria revised.	The Code currently has criteria for considering a Minor Amendment to the Comprehensive Plan. Consideration to revise the Code to replace current criteria (as provided in the Plan) are intended to be brought forth in a future text amendment. Clarify intent by changing to: “A Minor Amendment <u>may be considered when</u> the City Council makes specific findings that: ▪ The existing Comprehensive Plan and/or any related element thereof requires the proposed amendment; and ▪ The community or area will derive benefits from the proposed amendment; <u>and/or</u> ▪ It will be consistent with the vision, goals, principles, and policies of One Grand Junction Comprehensive Plan and the elements thereof.”	Replace text with underlined text “...may be considered when...” and “and/or” as show in the column to the left.

LU Map	Change area north of H Road between 24 3/8 Road and 24 3/4 Road from Rural to Residential Low	 LAND USE MAP Land Use Categories - Rural Residential - Residential Low - Residential Medium - Residential High - Mixed Use - Commercial - Industrial - Parks and Open Space Context - Urban Development Boundary	Approved Change
LU Map	Change 12-acre property at 2741 Riverside Parkway from Mixed Use to Industrial	 LAND USE MAP Land Use Categories - Residential Medium - Residential High - Mixed Use - Commercial - Industrial - Parks and Open Space Context - Urban Development Boundary	Approved Change



Memorandum

TO: Mayor and Members of Council; Members of the Planning Commission
FROM: Lance Gloss, Senior Planner
DATE: December 28, 2020
SUBJECT: Regulation of Marijuana Businesses and Request to Refer a Question to the April 2020 Ballot

In the course of several months, a substantial effort has been made to establish framework for marijuana businesses in the City, and to identify steps that would be required to that end. Members of the City Council have convened five times on the topic of marijuana businesses in 2020: first to explore options related to this topic at the July 13, 2020 City Council Workshop; then to solicit public comment at the September 14, 2020 City Council Workshop; then at the September 17, 2020 Joint City Council-Planning Commission Workshop; once at the November 30, 2020 City Council Workshop; and, most recently, on the December 17, 2020 Joint City Council-Planning Commission Workshop. At the direction of City Council, staff from the Community Development Department, Police Department, Fire Department, City Attorney's Office, Finance Department, City Manager's Office, and City Clerk's Office have engaged in substantial research on this topic, engaging professionals from more than 15 outside municipalities and agencies to review best practices. And, at the direction of City Council, staff have established, convened, and concluded a community Marijuana Working Group comprised of 22 invitees of diverse backgrounds and expertise, which assembled for eight sessions and delivers the attached recommendation to Council.

In order to proceed, as discussed at the December 17, 2020 Joint City Council-Planning Commission Workshop, two primary steps have been identified. The first is for the City Council to consider two questions for presentation to the April 6, 2020 ballot. The first question concerns repeal of the 2011 voter-approved moratorium on marijuana businesses in the City; the second concerns establishment of a sales and/or excise tax authority with affiliated provisions related to TABOR compliance. In order to be considered for the April 6, 2020 ballot, the City Council must hear the ordinance presenting the question no later than at their February 3, 2020 regular public hearing as the ballot language must be certified by February 5, 2020. Staff has assembled documentation and recommendations that can facilitate the finalization of a pair of ballot questions in the timely manner necessary to bring the questions to April 6, particularly considering the seemingly preferred direction by City Council that the ballot questions be broad in scope and, in this way, retain the maximum viable amount of flexibility for the second identified step in this process. The most substantive decisions that must be made in preparing the ballot questions are the tax rate or tax authority, as well as whether—and if so, to what specific uses—tax revenues should be earmarked.

The second identified step consists of considering the detailed regulatory options for the wide scope of marijuana-related businesses. This can be accomplished over a longer period and may be well suited for initial consideration by the Planning Commission, as was discussed by those who participated at the December 17, 2020 Joint City Council-Planning Commission Workshop. The City's Planning Commission routinely takes up matters of this type, given their

relative expertise in the types of land-use considerations at hand, such as zoning, use-specific standards, and use compatibility. Such matters have been considered by staff and the Marijuana Working Group, and recommendations and research have been—and will continue to be further—compiled to facilitate the work of Planning Commission.

Staff considers it most expedient that the Planning Commission develop a position on the various options for marijuana sales, processing, cultivation, and other businesses, and that this broader position be subsequently refined with the involvement of City Council and public participation. Once refined, and if retained for consideration, these positions would then be reflected in separate ordinances. Such ordinances would accommodate the vast majority of the regulatory specifics for marijuana businesses in the City, thereby relieving decision-makers from that responsibility in the shorter period of time required to present questions for the April 6, 2020 ballot. Specifically, the ordinances that would be developed would consist of, at a minimum:

- 1) an ordinance that repeals the prohibition of marijuana businesses in Title 5, Chapter 14 of the GJMC and amends the same chapter to include rules and regulations for licensing of marijuana businesses;
- 2) an ordinance to amend Title 5 of the GJMC to include a chapter for regulations and licensing of retail marijuana businesses; and
- 3) an ordinance to amend Title 3 of the GJMC to include a retail marijuana sales tax and recreational marijuana excise tax.

Such ordinances may only become law following a “Yes” vote on both ballot questions as described above, leaving at minimum three and a half months from the dating of this memo for these details to be resolved at a Planning Commission level and advanced to City Council and the public for further consideration. The precise timing of these Ordinances, subsequent to a “Yes” vote on the ballot questions, would remain at the discretion of public officials and, barring action by petition of the public, could be finalized substantially after the April election. Subsequent to a “No” vote on the ballot questions, there would be no identified need to further develop the regulatory structure and ordinances.

Though the specific regulations for marijuana businesses need not be fully designed prior to the placement of an April ballot question, it may still be found helpful to understand the regulatory options. These are described in depth in the December 17, 2020 Staff Report on this topic, as well as in previous staff reports and supplemental materials, including the attached recommendation from the Marijuana Working Group. Briefly, there are at least five major decisions to be made prior to an Ordinance. The first decision—impacting all other decisions in this stage of the process—is which of the various license types for marijuana businesses should be entertained by the City. The most expedient decision, and that which reflects the recommendations of the Marijuana Working Group, may be to allow for the three license types that may be considered the core or major licenses categories including sales; cultivation; and products manufacturing. Alternatively, additional licenses or a subset of these licenses can be considered.

The subsequent decisions will relate to specific license types. Two decision points engage directly with land-use: in which zone districts of the City should each business type be allowed; and, which other land-use regulations should be applied to each of the business types. A range of best practices and recommendations are available to facilitate discussion of these choices with the Planning Commission and subsequently City Council. A fourth question relates specifically to the number of stores and is identified separately because of its complexity, as well as its likely importance to public perception of a regulatory approach. Specifically, a decision must be made on whether to explicitly limit the number of marijuana stores (overall or by district), what that numerical limit (or “cap”) would be, and how businesses would be chosen (such as by lottery or competitive process). Finally, a fifth arena

of considerations relate to licensing, administration, and enforcement, with key sub-questions including staffing, primary points of contact within the City for licensed businesses, and similar.

Substantial staff and community resources continue to be assigned to support this effort, and the City benefits immensely from nearly a decade of retail marijuana regulations being tested and refined by jurisdictions throughout the State Colorado, as well as from the participation of State regulators.

Staff has currently scheduled this topic, specifically the issue related to the development of ballot language, for the January 4, 2020 City Council workshop. To advance this forthcoming discussion, staff has provided as an attachment draft ballot questions for consideration.

Attachments:

Marijuana Working Group Recommendations
Draft Ballot Questions

Recommendation from the Marijuana Working Group

BACKGROUND

The following recommendation was directly derived from written responses and group discussion of the Marijuana Working Group to a set of options provided by City staff. The Marijuana Working Group met eight times in November and December 2020 and received input from various experts in the regulation of marijuana businesses. The Group's composition included local business leaders and real estate experts; local residents engaged with various neighborhoods and constituencies; marijuana and hemp industry leaders from across Western Colorado; and executive-level leadership from several public institutions in the Grand Valley. The Group was closely coordinated by City Staff from the Community Development Department, Police Department, Fire Department, City Attorney's Office, Finance Department, City Manager's Office, and City Clerk's Office.

RECOMMENDATION

Summary of Working Group's Recommendations:

Retail Sales	Cultivation	Products Manufacturer	Hospitality	Delivery	Sales Tax
Allow	Allow	Allow	Do not allow	Medical only	1. Place additional tax 2. Earmark revenues

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

Allow for both retail and medical sales licenses provided that these licenses are limited to C-1, C-2, B-1, and B-2 zone districts, with a decision on B-2 (Downtown Business) being guided with consideration to the Downtown Development Authority and downtown businesses. These businesses should also be subject to a buffer of 1,000 feet from any District 51 educational institution; of 500 feet from any higher education campus and from any licensed childcare center; and of 2,000 feet of any other licensed medical/recreational retail storefront. They should also be subject to use-specific standards including limitations on signage, advertising, odor, and security. Finally, a cap on the number of businesses should be strongly considered, such as would limit the number of stores to a total of between 6 and 10 stores. Detailed consideration should be given to any mechanism for enforcing the cap.

Cultivation Licenses

Allow for Cultivation provided that such operations be limited to the indoors for the control of nuisance, visual impact, and possible impacts to the hemp industry. Permits should be available for issuance no sooner than January 1, 2022. These should be limited to I-1 and I-2 zone districts. Cultivations should be subject to a buffer of 1,000 feet from any District 51 educational institution, and of 500 feet from any higher education campus and from any licensed childcare center. These operations should be subject to use-specific standards for odor and security and visual buffering from high-visibility corridors such as Riverside Parkway, and with setbacks from residential uses. These licenses are primarily relevant as a means of job creation and economic development.

Products Manufacturer Licenses

Allow for Products Manufacturer licenses provided that these are limited to I-1 and I-2 zone districts, and that they are subject to use-specific standards for signage, odor, security, and safety. These licenses are primarily relevant as a means of job creation and economic development.

Hospitality Business Licenses

Do not allow Hospitality Businesses at this time. These businesses may be considered in the future but are, to date, relatively untested and would therefore require a greater administrative burden and pose a greater risk for unpredictable impacts. They may, in the future, support a viable contribution to tourism and would also provide a service to City residents.

Delivery Licenses

Allow Delivery licenses for medical marijuana only, subject to further regulation. If not allowing these licenses, state explicitly in a regulatory ordinance that delivery operations licensed in another jurisdiction shall not operate within City limits. These licenses may be reconsidered in the future as regulations are further clarified by the State.

Sales Tax Rate and Fees

Place an additional sales tax on all retail sales of marijuana, tax rates should be set to maximize revenues by setting a tax rate that is at or above the rate imposed in nearby communities. Fees should be set to fully fund administration through licensing and renewal fees. A ballot question should include a maximum local sales tax of 15%, while the exact tax rate should be set by ordinance and should be set near the mean regional rate of approximately 5%.

Excise Tax Rate and Fees

Place an additional excise tax on all processing and cultivation, with the excise tax rate 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. A ballot question should include a maximum local excise tax of 15%, while tax rate should be set by ordinance. The initial tax rate should be set at or below the mean regional rate, between 0% and 3%.

Tax Revenue Usage

Earmark tax revenues primarily for administration and enforcement, with additional revenue allocated to parks and recreation and/or education. Revenue should be explicitly earmarked for specific uses; earmarking for broad purposes or for the general fund may be less successful on the ballot. Licensing and administration should be funded by fees where possible, without being cost-prohibitive to business.

FURTHER COMMENTARY

A range of dissenting and variant comments were raised by one or more members of the working group. These include, but are not limited to:

- Opposition to any ballot question that would allow retail marijuana businesses;
- Opposition to the allowance of medical and retail sales in B-1 and B-2 zone districts;
- Opposition to the setting of a numerical cap on the number of marijuana stores;
- Wide variation in the recommended number of stores, should a numerical cap be set;
- Support for different combinations of uses and distances included in the buffering of marijuana sales businesses, including removing parks from the list of buffered uses and/or adding treatment centers/halfway houses to the list of buffered uses;
- Opposition to the inclusion of K-12 education in the list of possible tax revenue uses;
- Support for earmarking tax revenues explicitly for the enforcement of black-market drug regulations and the recruitment of new officers;

- Opposition to directing marijuana revenues to the development of a community rec center;
- Support for a broadly more permissive environment for marijuana businesses to encourage attendant economic development;
- Support for a flat rate annual fee on license holders as a substitute for excise tax or sales tax;
- Support for enabling marijuana sales businesses along portions of North Avenue regardless of buffering regulations that may apply elsewhere;

1 RESOLUTION ____ 21

2

3 RECITALS.

4

5 In October 2010 the City Council adopted Ordinance 4437. That Ordinance prohibited the operation of
6 medical marijuana businesses in the City limits and amended the Grand Junction Municipal Code by the
7 addition of certain sections prohibiting specified uses relating to marijuana. A petition protesting the
8 passage of Ordinance 4437 was filed, found to be sufficient, and the Ordinance was suspended.

9 In December 2010 the City Council approved a ballot question referring Ordinance 4437 to the regular
10 municipal election on April 5, 2011.

11 Referred Measure A, which was approved with ____ in favor and ____ against, prohibited the operation of
12 medical marijuana businesses and amended the Grand Junction Municipal Code to prohibit certain uses
13 relating to marijuana.

14 On January ____ 2021 the City Council considered this Resolution, the adoption of which will refer a
15 ballot question to repeal Referred Measure A to the regular municipal election on April ____ 2021.

16

17 NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND
18 JUNCTION THAT:

19

20 The ballot question will provide for the repeal of 2011 Measure A which prohibited the operation of
21 medical marijuana businesses and amended the Grand Junction Municipal Code by the addition of a new
22 section prohibiting certain uses relating to marijuana; however, the question shall also provide that repeal
23 of Measure A shall be contingent on and subject to voter approval of Measures ____ and ____ on the April
24 2021 ballot relating to approval of taxation of marijuana business in the City of Grand Junction.

25 The following question shall be submitted to the registered electors at the regular municipal election on
26 April __, 2021.

27 SHALL THE CITY OF GRAND JUNCTION, COLORADO ALLOW THE OPERATION OF
28 MARIJUANA BUSINESSES AND AMEND THE GRAND JUNCTION MUNICIPAL CODE BY THE
29 ADDITION OF NEW SECTIONS PERMITTING, SUBJECT TO REGULATIONS TO BE ADOPTED
30 BY ORDINANCES OF THE CITY, CERTAIN USES RELATING TO MARIJUANA, AND BY SO
31 DOING REPEAL 2011 VOTER APPROVED MEASURE A, WITH THE APPROVAL OF THIS
32 QUESTION AND THE REPEAL OF MEASURE A BEING SUBJECT TO AND EXPRESSLY
33 CONTINGENT UPON VOTER APPROVAL OF MEASURES __ AND __ ON THE APRIL 2021 CITY
34 OF GRAND JUNCTION BALLOT AUTHORIZING TAXATION OF MARIJUANA BUSINESSES IN
35 GRAND JUNCTION, ALL AS A VOTER APPROVED MEASURE UNDER ARTICLE XVI,
36 PARAGRAPH 137, OF THE CITY CHARTER?

37 _____ Yes

38 _____ No

39

40 The ballot title is set based upon the requirements of the Colorado Constitution and the City Charter and,
41 pursuant to Section 31-11-102, C.R.S., is an alternative to the provisions of Section 31-11-111, C.R.S.
42 regarding both a title and a submission clause. Pursuant to Section 31-10-1308, C.R.S., any election
43 contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the
44 form or content of the ballot title shall be commenced by petition filed with the proper court within five
45 days after the title of the ballot issue or ballot question is set.

46

47 Adopted this __ day of January 2021.

48

49

50 C.E. "Duke" Wortmann

51 President of the Council

52

53 ATTEST:

54

55 Wanda Winkelmann

56 City Clerk

57

58

59

60

61

62

TAX ON THE CULTIVATION, MANUFACTURING AND RETAIL SALE OF MARIJUANA AND
MARIJUANA PRODUCTS FOR RECREATION, HEALTH AND ENFORCEMENT PURPOSES

SHALL CITY OF GRAND JUNCTION TAXES BE INCREASED BY \$ [REDACTED] DOLLARS
ANNUALLY IN THE FIRST FULL FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED
ANNUALLY THEREAFTER BY IMPOSING AN ADDITIONAL SALES AND USE TAX OF [REDACTED] % ON
THE RETAIL SALE OF ALL MARIJUANA AND MARIJUANA PRODUCTS WITH
AUTHORIZATION THAT THE ADDITIONAL SALES AND USE TAX COULD BE INCREASED
WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF TAXATION DOES NOT
EXCEED 15% THEREAFTER AND THE IMPOSITION OF AN EXCISE TAX OF 5% IN THE FIRST
YEAR AND UP TO 10% THEREAFTER ON THE CULTIVATION AND/OR SALE OR TRANSFER
TO A STORE OR FACILITY THAT MANUFACTURES MARIJUANA PRODUCTS WITH THE TAX
CALCULATED ON THE AVERAGE MARKET PRICE OF THE MARIJUANA PRODUCTS GROWN
AND/OR MANUFACTURED AT THE POINT OF TRANSFER FROM THE CULTIVATION AND/OR
MANUFACTURING FACILITY WITH THE REVENUES FROM EXCISE AND THE SALES AND
USE TAXES BEING USED FOR THE IMPROVEMENT AND PROTECTION OF THE COMMUNITY
AND HEALTH AND WELFARE OF ITS CITIZENS INCLUDING

- BUILDING, OPERATING AND MAINTAINING THE HIGHEST PRIORITY(IES) OF THE
2021 PARKS AND RECREATION OPEN SPACE (PROS) PLAN WHICH INCLUDE INDOOR
AND OUTDOOR RECREATION AND PARK FACILITIES, CAPITAL IMPROVEMENTS
AND ENHANCEMENTS TO THE CITY'S PARKS, TRAILS AND OPEN SPACE SYSTEM;

- AND TOGETHER WITH ORDINANCE(S) TO BE SEPARATELY ADOPTED BY THE CITY COUNCIL, LAWS, RULES, REGULATIONS, FEES AND ENFORCEMENT THEREOF ON THE MARIJUANA INDUSTRY INCLUDING SPECIFIC EFFORTS AT ENFORCEMENT AND PREVENTION OF UNDERAGE CONSUMPTION OF MARIJUANA; WITH ALL EXPENDITURES SUBJECT TO ANNUAL FINANCIAL AUDIT, AND THAT THE CITY MAY COLLECT, RETAIN AND EXPEND ALL OF THE REVENUES OF ALL OF SUCH TAXES AND THE EARNINGS THEREON AS A VOTER-APPROVED REVENUE CHANGE WITHOUT LIMITATION OR CONDITION UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?



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

None



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

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.

ZONING **PRACTICE**

AUGUST 2016



AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 8

PRACTICE **MARIJUANA LAND USE**



Regulating Medical and Recreational Marijuana Land Use

By Lynne A. Williams

Twenty-five states and the District of Columbia allow the cultivation, sale, and use of medical marijuana.

In addition, four states—Colorado, Washington, Oregon, and Alaska—have legalized the cultivation, possession, use, and sale of recreational marijuana, and the District of Columbia has legalized cultivation, possession, and use. In 2016, there will likely be at least five, if not more, states that will vote on the legalization of recreational marijuana, including Arizona, California, Massachusetts, Nevada, and Maine. (For information about individual states and the status of marijuana laws, see norml.org/states.)

While the legalization of medical marijuana created some land-use issues, for the most part they are simpler and less urgent compared with issues related to the legalization of recreational uses. California failed to even enact a regulatory scheme until late 2015, 19 years after legalizing medical marijuana. During that time, so-called dispensaries proliferated but towns and cities were slow to address potential land-use issues, given the lack of guidance by the state. Maine, which legalized medical marijuana in 1999, did not even allow dispensaries until 2009. So for 10 years Maine's patients got their medicine from a system of individual caregivers, most of whom operated out of their homes or farms and were limited to serving five or fewer patients. However, the legalization of recreational marijuana in a number of states, with more to follow—combined with the possibility of new dispensaries in some states—has spurred towns and cities to begin to discuss land-use issues for marijuana businesses.

Currently, towns, cities, and counties use a wide variety of regulatory tactics to control marijuana businesses and activities, and those tactics break down into two broad groups—business licensing standards and zoning. With respect to medical marijuana uses, most of the focus has been on regulating the siting of dispensaries and cultivation operations through zoning. The types of regulatory schemes es-

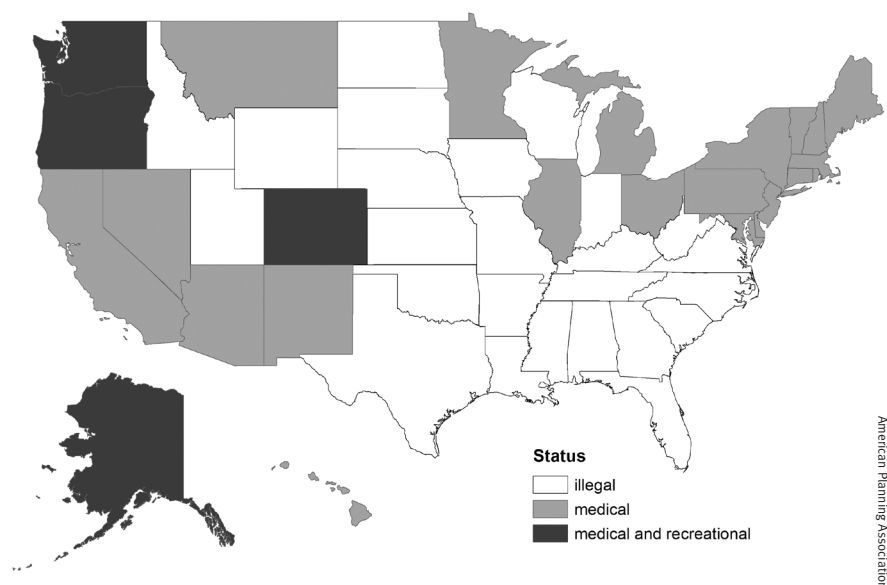
tablished in the newly legalized recreational marijuana states range from localities “opting out” to making a marijuana business a “use by right” in certain districts, with a required permit. Most tactics use both zoning and business licensing regulations, often in combination. For example, a business licensing requirement can be overlaid on a zoning ordinance, so that if a marijuana business use is an allowed use, the business must still obtain a license, and that process would address specific aspects of the business, such as safety issues, noise, odors, parking, traffic, and other impacts.

This article reviews local approaches to regulating medicinal and recreational marijuana. While both medical and recreational marijuana businesses are part of a new economic sector that involves land uses and businesses,

heretofore unseen in many communities, there are multiple options that can be implemented. The following sections discuss how these options are being implemented both in jurisdictions that have legalized recreational marijuana as well as in those that have only legalized medical marijuana.

FEDERAL PREEMPTION

Marijuana, whether medical or recreational, continues to be listed on Schedule I of the U.S. Controlled Substances Act (CSA) and is therefore still illegal under federal law. However, the U. S. Department of Justice (DOJ), most recently in 2013, has advised federal prosecutors to refrain from using scarce federal drug enforcement resources to prosecute individuals who are in compliance with state law (Cole 2013).



As of July 2016, 25 states and the District of Columbia have legalized medical marijuana. Four of those states have also legalized recreational marijuana sale and usage.

This advisory from the DOJ reduced the potential conflict between the federal government and those states that have legalized recreational or medical marijuana. And reducing conflict between the states and the federal government will consequently constrain the ability of a local jurisdiction to successfully ban marijuana businesses based on an argument that such businesses are in violation of the CSA.

Division One of the Arizona Court of Appeals is currently considering a case in which Maricopa County attempted to prevent White Mountain Health Center, a dispensary, from opening (*White Mountain Health Center, Inc. v. Maricopa County et al.*, 1 CA-CV 12-0831). The county argued that denying a dispensary a permit to open is legally permissible since such a business violates the CSA. However, while states can regulate marijuana, they are not required to enforce federal law. In this case, Arizona has legalized medical marijuana and regulates dispensaries, and White Mountain argues that the county's denial of a permit was impermissible in that it conflicted with state law. The *White Mountain* decision will likely be issued soon.

In February 2014, the Michigan Supreme Court declared a city zoning ordinance in Wyoming, Michigan, void because it prohibited uses that were permitted under state law (*Ter Beek v. City of Wyoming*, 846 N.W.2d 531, 495 Mich. 1 (2014)). The plaintiff was a qualifying patient who wished to grow and use marijuana for medical purposes in his home. The town of Wyoming had passed an ordinance prohibiting the activity. The court held that a municipality is precluded from enacting an ordinance if the ordinance directly conflicts with the state's statutory scheme of regulation, in that the ordinance permits what the statute prohibits, or prohibits what the statute permits. In this case, the Michigan Medical Marijuana Act permitted qualified patients to grow their own medicine; therefore, the city could not prohibit such a practice.

MEDICAL MARIJUANA REGULATORY MODELS

The first medical marijuana statute was passed 20 years ago, but in many ways it is only within the last few years that those early statutes have been refined on the local jurisdictional level. Some jurisdictions were required by newly passed state regulations to create local ordinances, such as Humboldt County, California, and the municipalities within the county, while other local jurisdictions, including Detroit, took

the initiative following a period of confusion over the definition and regulation of dispensaries.

Humboldt County, California

Earlier this year, California's Humboldt County passed one of the most comprehensive land-use ordinances to date regulating medical marijuana production. The Commercial Medical Marijuana Land Use Ordinance (CMMLUO) passed the Board of Commissioners unanimously, a testament to the many disparate groups coming together to draft the ordinance (Ordinance No. 2544). Much of Humboldt County is unincorporated land, and although there are municipalities in the county, much of the cultivation is done on unincorporated land.

The CMMLUO includes two parts: one regulating the coastal zone and the other regulating inland cultivation. Both zones are regulated according to a list of factors, including whether the applicant is a new or existing grower, the parcel size, the cultivation area size, and whether the proposed grow operation will be outdoors, indoors, or mixed-light, meaning that both natural light and artificial light will be used.

The goal of the CMMLUO is very clear: "to limit and control such cultivation in coordination with the State of California." Although the Compassionate Care Act was passed in 1996—the first medical marijuana law in the country—the state failed to enact medical marijuana regulations until late 2015. Humboldt County was proactive in enacting a countywide ordinance to immediately comply with state law. The ordinance specifically defines exactly what it is regulating. "This section applies to all facilities and activities involved in the Commercial Cultivation, Processing, Manufacture or Distribution of cannabis for medical use, in the County of Humboldt" (CMMLUO §55.4.9). The type of approval necessary for licensing is dependent on the size and current zoning classification of the parcel, as well as the type of state license that the applicant is required to obtain.

The Humboldt municipalities of Arcata and Eureka have also passed ordinances related to cultivation. Arcata essentially permits only small-scale and home cultivation, although those with special needs may request more grow space (Land Use Code §9.42.105). It also enacted a 45 percent tax increase on residences that use more than 600 percent of

Medical Marijuana Terminology

It is far easier to define recreational marijuana uses by the vocabulary of traditional businesses, such as agricultural, retail, food processing, and the like, than it is to define medical marijuana uses. There is no national consensus on terminology in the medical marijuana arena. In fact, the word "dispensary" has multiple meanings depending on location. In most, but not all, of the medical marijuana states, the term "dispensary" means the entity that distributes medicinal marijuana to qualified patients. This may be a large facility that also cultivates the marijuana (e.g., Maine and Michigan) or a small shop that purchases from independent growers (e.g., California and Arizona). The entity can be a collective, nonprofit, for-profit business, or any other form of entity legal under state law.

In certain states the caregiver system, another form of cultivation and distribution, exists side by side with the dispensary system. Caregivers are state-licensed individuals who grow, process, and distribute medicinal marijuana to a limited number of qualified patients. Caregivers are regulated under state law, but have only recently been subject to land-use regulation. (For a chart detailing the distribution laws under each state that has legalized medicinal marijuana, see tinyurl.com/y2tyn7g.)

the energy baseline, with the aim of discouraging indoor growing (Municipal Code §2628.5). Eureka passed a much more restrictive and detailed ordinance, only allowing licensed patients to grow and process medical cannabis within a 50-square-foot area in their residence (§158.010(A)). The ordinance also states that such cultivation will constitute neither a home occupation nor an ancillary use (§158.010(C)). Patient marijuana processing is likewise narrowly regulated (§158.011).

Detroit

Detroit recently passed a medical marijuana ordinance requiring dispensaries, now called

Caregiver Centers, to apply to the city for a license (Ordinance 30-15). A subsequent zoning amendment added Caregiver Centers as permissible uses in specific zones and explicitly prohibits them in the Traditional Main Street Overlay and the Gateway Radial Thoroughfare Districts (Ordinance 31-15). Detroit seeks to distribute the Caregiver Centers rather than cluster them in a few areas, since they cannot be less than 1,000 feet from each other nor closer than 1,000 feet from a park, religious institution, or business identified as a controlled use, such as topless clubs and liquor stores. If a business is within 1,000 feet of any of these land uses, the board of zoning appeals allows for a variance process that could still allow the facility to establish or continue to operate. The city's Buildings, Safety, Engineering, and Environmental Department can also approve variances.

If, however, the parcel in question is less than 1,000 feet from the city-defined Drug Free Zones, that option is not available. No variance is allowed for parcels falling into these buffer zones, and there are many such buffers zones. The federal Drug Free School Zone applies just to libraries and K–12 schools. However, the Detroit version includes arcades, child care centers, youth activity centers, public housing, outdoor recreation areas, and all educational institutions, including all of their properties. In the industrial districts, the centers can be less than 1,000 feet from each other to allow for some clustering, and the buffer zone from residential areas is waived.

An individual who cultivates marijuana in a residence in Detroit is required to register as a home-based occupation. The city's licensing standards state: "Except for home occupations . . . no person shall dispense, cultivate or provide medical marijuana under the Act except at a medical marihuana caregiver center" (§24-13-4). That registration process involves inspection and approval by numerous city agencies.

Maine

Maine passed its medical marijuana law in 1999, but it was not until 2009 that dispensaries were allowed there. Up until that time, patients received their medicine from a caregiver, individuals licensed to grow and distribute medicinal marijuana to no more than five patients. That system remains operational, with over 2,000 caregivers, and is greatly favored by many patients in the state. There has been little impact of land-use regulation on caregivers, for a number of reasons. The fact that an

individual is a caregiver is kept confidential by the state, so a town doesn't really know who the caregivers are. Until a year or two ago, caregivers mainly grew their plants and serviced their patients out of their homes, and many towns essentially allow home occupations with few, if any, restrictions.

In the last two years, however, there has been an increase in the number of caregivers leasing commercial space, primarily in light industrial zones. Thus the towns where this is occurring will need to decide whether they wish to develop special regulations for buildings housing multiple caregivers in industrial zones. There is no state law prohibiting this practice, even though under state law each caregiver must have his or her own locked space within the building, and that space must be inaccessible to anyone else except their one employee. Some towns maintain that any growing of plants by a caregiver, whether indoors or outdoors, is an agricultural use, thereby preventing multiple caregivers from leasing grow spaces in an industrial space. Conversely, those towns that classify caregiving as a light industrial use will have to contend with outdoor cultivation and grow operations in homes and on farms in residential districts.

Maine towns that have chosen to refine their land-use ordinances to address medical marijuana caregiving share some common goals: updating existing site plan review requirements, if needed; defining the caregiver land-use category; considering a "safe zone" as an overlay zone, thereby requiring greater setback distances than other uses in the zone; instituting fencing and setback requirements on outdoor cultivation; and considering standards for multiple caregiver facilities.

In 2009, the Maine Medical Use of Marijuana Act was amended to allow eight dispensaries in the state, one in each of eight regions. Even though the cap on dispensaries has been reached, some towns with land-use ordinances are struggling to find ways to regulate dispensary locations if the cap is lifted. State law is clear that a town cannot ban dispensaries but can limit the number to one. In general, what a number of towns are attempting to do is bring dispensary siting under site plan review and define what zone or zones are appropriate for a dispensary. Often the dispensaries are relegated to one, or a few, locations, a form of cluster zoning rather than keeping dispensaries and other marijuana businesses a distance away from each other. A few towns are looking at an



Joshuasandovel, Wikimedia (CC-BY-SA-3.0)



A former fast food restaurant in California was converted into a medical marijuana dispensary.

overlay district, which would impose additional controls and an additional form of review, over dispensary siting.

RECREATIONAL MARIJUANA REGULATORY MODELS

Towns, cities, and counties within states that have legalized recreational marijuana have taken very different regulatory tacks. For example, the state of Washington has practically subsumed the Washington medical marijuana program into the recreational legalization scheme, in a bill passed in April 2015 that will be implemented in 2016. And Oregon, while keeping the medical program separate from the regulation of recreational marijuana businesses, has imposed strict new rules on the medical growers and patients.

A key issue for states that have legalized recreational marijuana is where marijuana may be smoked or vaped. None of the legalization statutes permit smoking marijuana in public, so, particularly in communities with a large number of tourists, the issue of consumption location is a critical one. Although a tourist can purchase marijuana, smoking might not be allowed in a hotel or motel room. To address this issue, some jurisdictions are looking at permitting so-called “social clubs,” similar to cigar bars, where visitors could smoke or consume marijuana. None of the four states that have legalized recreational marijuana included social clubs in their statutes. However, a pending rule change in Alaska would allow existing marijuana retail stores to purchase a separate license for a “consumption area.” And in November, Denver voters will consider a measure that would allow the consumption of marijuana—but not sales—at private social clubs and during private events if the organizers obtain a permit.

Below is a discussion of local prohibition in Pueblo, Colorado, and use by right in Pueblo County; traditional zoning and business permitting in Seattle; a focus on farmland preservation and opt-in/opt-out in Oregon; and a focus on business licensing, as opposed to zoning-based controls, in Denver.

Pueblo County, Colorado

In 2012, Colorado Amendment 64 gave local governments the power to decide whether and how to permit recreational marijuana within their community. A 2014 annual report stated that as of that time 228 Colorado local jurisdictions had voted to ban medical and retail mari-

juana operations. The city of Pueblo banned recreational marijuana retail stores within city limits and had formerly placed a moratorium on medical marijuana dispensaries.

However, Pueblo County, which governs all unincorporated land in the county, acted differently, making marijuana businesses a by-right use in commercial and industrial districts, thereby allowing such businesses to avoid lengthy governmental reviews (§§17.120.190–240). In addition, the county also made marijuana cultivation a by-right use, apparently the first Colorado county to do so. The county also passed rules mandating a five-mile distance between hemp growing areas and existing marijuana growing areas so as to avoid cross-contamination (§17.120.280). In addition to land-use regulation, the Pueblo Board of Water Works passed its own resolution to address the fact that the Federal Bureau of Reclamation prohibits the use of federal water for marijuana cultivation (Resolution No. 2014-04). The water board subsequently concluded that they could lease up to 800 acre-feet of water to marijuana cultivators each year (Resolution No. 2014-05).

Seattle

Washington voters approved Initiative 502, legalizing recreational marijuana, in 2012. The year before, Seattle had passed Ordinance 123661, clarifying that all marijuana businesses, including manufacture, processing, possession, transportation, dispensing and the like, must be in compliance with all city laws, as well as applicable state laws. In 2013, the city amended its zoning ordinance to specify where larger-scale marijuana business activities could locate (§23.42.058). The specific activities include processing, selling, delivery, and the creation of marijuana-infused products and usable marijuana. While these activities are prohibited in residential, neighborhood commercial, certain downtown, and several historic preservation and other special-purpose districts, the zoning ordinance does not require a land-use permit to specifically conduct marijuana-related activities in industrial, most commercial, and a few downtown districts.

For example, an applicant who wishes to open a marijuana retail store or an agricultural application is required to get the applicable permit, but is not required to disclose that the use is marijuana related. The ordinance does, however, impose a size limit on indoor agricultural operations in industrial areas, but this applies to all agricultural uses in industrial areas,

not just marijuana production (§23.50.012, Table A, Note 14).

Meanwhile, state law further restricts permissible locations for marijuana businesses. The state will not grant a license to any marijuana business within 1,000 feet of an elementary or secondary school, playground, recreation center, child care center, park, public transportation center, library, or game arcade that allows minors to enter.

Oregon

The voters of Oregon passed Measure 91 in 2014, legalizing recreational marijuana and related businesses, and the legislature enacted HB 340 in July 2015, thereby establishing a regulatory framework for such businesses.

Farmland preservation is one of the major objectives of land-use regulation in Oregon. Following the passage of Measure 91, a “local option” was created, whereby a local government in a county where at least 55 percent of the voters opposed Measure 91 could opt out of permitting marijuana businesses. The local government had 180 days from the passage of HB 340 to choose to opt out. Local governments in counties where more than 45 percent of the voters supported Measure 91 could refer an opt-out measure to the local electorate for a vote.

Many local governments have chosen to opt out, including a number of rural towns and larger municipalities such as Grant’s Pass and Klamath Falls (Oregon Liquor Control Commission 2016). Medford has banned retail marijuana businesses but permits producers and processors. However, some of the towns and cities still need to hold a general referendum on the issue in November 2016.

Portland has chosen to take a two-pronged approach to the regulation of marijuana businesses. The city’s zoning authority has not adopted rules governing the zoning of marijuana businesses, but is applying the city’s general development rules to them. Those rules include such standards as setbacks, conditional uses, parking height limitations, lot coverage, and the like that are specific to each zone. Therefore, if a marijuana retail business wishes to locate in a retail district, it would be allowed to do so provided the proposed business complies with the relevant general development rules in that district. However, the city does require that such businesses get a special license, and the licensing provisions stipulate a 1,000-foot buffer between retail marijuana

businesses (Chapter 14B.130). As another example, Bend's development code allows retail marijuana businesses in commercial zones and production and processing in industrial zones with certain restrictions, including visual screening, security, and lighting requirements (Development Code §3.6.300.P).

Oregon state law requires non-opt-out rural counties to treat cultivation businesses as a permitted farm use in the farm use zone, but these counties have discretion about how they treat production in other zones. Clackamas County, for example, treats marijuana cultivation as a farm use in other natural resource zones, including forest zones and mixed farm-forest zones (§12.841).

Denver

Denver licenses four types of retail recreational marijuana-related businesses: retail stores, optional premises cultivation, infused products manufacturing, and marijuana testing facilities (§§6-200–220). The city made a conscious decision not to regulate marijuana businesses as distinct land-use categories, but its licensing standards do cross-reference the zoning code. Denver also grandfathered business locations that existed before the licensing regulations were implemented. This mainly benefitted medical marijuana dispensaries that had been in place before Denver adopted a new zoning code in 2010.

The city regulates medical marijuana establishments under a separate set of provisions in the Health and Sanitation section of its code (§§24-501–515).

Denver currently prohibits medical and recreational retail stores in any residential zone, any “embedded retail” district (small retail district embedded in a residential district), any location prohibiting retail sales, and within 1,000 feet of any school or child care center, any alcohol or drug treatment facility, and any other medical marijuana center or dispensary or retail marijuana store. However, the distance requirements are computed differently for medical marijuana centers versus retail stores. The medical marijuana center regulations use a measurement called a “route of direct pedestrian access,” and the retail stores regulations use a computation “by direct measurement in a straight line.”

Denver's retail and medical marijuana regulations allow cultivation in any location where plant husbandry is a permitted use, and grandfathering is allowed in these zones. The regulations also allow licensing for marijuana-infused products on a lot in any zone where food preparation and sales or manufacturing, fabrication, and assembly are permitted.

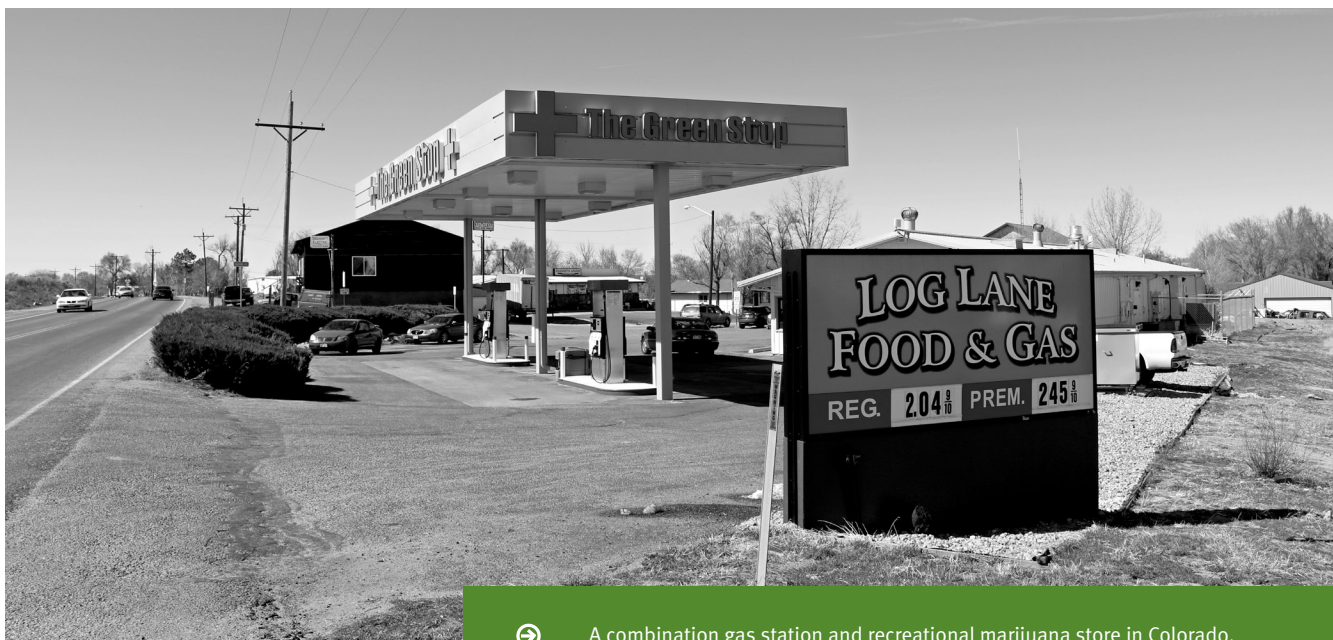
PLANNING TO PLAN

Over my years as an attorney in the land-use arena, I have seen numerous towns and cities

start down the path of amending their land-use ordinance without answering certain basic questions. Often this is based on a failure to identify what sorts of as yet unheard-of businesses or other operations might, one day, file for site plan review—or, more troubling, *not* file for site plan review because the use is not covered by the land-use ordinance. However, it is at just this time that the local government must act thoughtfully and not overreact. Rather, the locality should answer certain questions.

First, should marijuana businesses be subject to special regulatory controls? If not, what category of use does a specific marijuana business fall into? Without special regulatory controls it will be governed just as any similar use is governed.

For example, California passed the first medical marijuana law in 1996, but since then there has been a problem defining a medical marijuana business. Is a dispensary retail or light industrial? Is a caregiver agricultural, home occupation, or light industrial? Is an outdoor cultivation operation agricultural and an indoor cultivation operation a home occupation or light industrial? Additionally, will the regulation of marijuana businesses include only land-use controls, only licensing requirements, or a combination of both? There are no clear answers to these questions, but in order to regulate successfully, each town must find its own answers.



Jeffrey Beall, Wikimedia (CC-by-3.0)



A combination gas station and recreational marijuana store in Colorado.

Additionally, since all operative medical and recreational marijuana laws are based on statewide statutes, a locality must also address whether a proposed ordinance is in compliance with state law. In most, if not all, statewide marijuana laws, there is either a statement, or an unstated inference that the state has occupied the field of marijuana regulation, and that local ordinances cannot conflict with, or frustrate the intent of, state laws.

Many courts throughout the country have expressed the following sentiment: “A municipality may prescribe the business uses which are permitted in particular districts but to prohibit the sale of all intoxicating beverages or other activities where such sale has been licensed by the state is to infringe upon the power of the state” (*Town of Onondaga v. Hubbell*, 8 N.Y.2d 1039 (1960)). Even home rule, in home-rule states, has its limitations.

Even using zoning in combination with business licensing can create problems. A case currently making its way through the Maine court system is a challenge to a local ordinance that requires medical marijuana caregivers to come to a public meeting in order to request a business permit.

The plaintiffs argue that the ordinance is a violation of state law, which clearly states that the identity of all caregivers must remain confidential, and makes disclosure of such information a civil violation with a fine imposed (*John Does 1–10 v. Town of York*, ALFSC-CV-2015-87). However, as caregivers begin to move away from home cultivation into leased industrial space, a town could conceivably require a non-caregiver landlord, who rents to caregivers, to obtain a business permit.

Conversely, under adult recreational statutes in those states that have legalized recreational marijuana—as well as under the initiatives to be voted on in November 2016—

the identity of the businesses seeking state licensure is not confidential. Municipalities and counties will therefore be able to determine the proposed business use, its suitability in a zone or district, and whether or not a business license is required, thereby moving marijuana land-use away from the often vague regulatory system of medical marijuana to the well-known structure of land-use regulation and business licensure.

Medical marijuana regulatory systems will still exist in most states that have legalized it, but it is likely that the majority of businesses in the marijuana sector will be recreational, rather than medical, and therefore more easily regulated by municipalities and counties.

CONCLUSION

The public is overwhelmingly in support of legalization of recreational marijuana. A recent Associated Press/University of Chicago poll indicated that 63 percent of those polled support legalization, although when broken down into medical and recreational, a smaller number, yet still a majority, supported recreational. That said, however, 89 percent of millennials, now the country’s largest generation, support complete legalization (Bentley 2016). As with medical marijuana legalization, as more states legalize, even more states will likely follow suit.

It is, therefore, incumbent on towns, cities, and counties to become educated on their state’s statutes and the local regulations that have been passed or will likely be passed in the future, and to draft land-use ordinances that address, in the ways most appropriate to the locality, the proliferation of medical marijuana and recreational marijuana uses.

Since most states have not yet legalized recreational marijuana, now is definitely the time to study and address the land-use issues that legalization may raise.

ABOUT THE AUTHOR

Lynne A. Williams is an attorney based in Bar Harbor, Maine, and she practices throughout the state. Her practice consists of land use, administrative litigation, and cannabis law. She was formerly the chair of the Bar Harbor Planning Board and is currently a member of the Harbor Committee of Bar Harbor.

Cover: sale 123/iStock/Thinkstock

Vol. 33, No. 8

Zoning Practice is a monthly publication of the American Planning Association. Subscriptions are available for \$95 (U.S.) and \$120 (foreign). James M. Drinan, JD, Executive Director; David Rouse, FAICP, Managing Director of Research and Advisory Services. Zoning Practice (ISSN 1548-0135) is produced at APA. Jim Schwab, FAICP, and David Morley, AICP, Editors; Julie Von Bergen, Senior Editor.

Missing and damaged print issues: Contact Customer Service, American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601 (312-431-9100 or customerservice@planning.org) within 90 days of the publication date. Include the name of the publication, year, volume and issue number or month, and your name, mailing address, and membership number if applicable.

Copyright ©2016 by the American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601-5927. The American Planning Association also has offices at 1030 15th St., NW, Suite 750 West, Washington, DC 20005-1503; planning.org.

All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the American Planning Association.

Printed on recycled paper, including 50-70% recycled fiber and 10% postconsumer waste.

REFERENCES

- Bentley, Guy. 2016. “Poll: Majority of Americans Support Marijuana Legalization.” *Daily Caller*, January 18. Available at tinyurl.com/j74uou3.
- Cole, James M. 2013. “Memorandum Regarding Marijuana Enforcement,” August 29. Washington, D.C.: U.S. Department of Justice. Available at tinyurl.com/zukglx4.
- Oregon Liquor Control Commission. 2016. “Record of Cities/Counties Prohibiting Licensed Recreational Marijuana Facilities.” Available at tinyurl.com/pq5qwye.
- Sacirbey, Omar. 2016. “Cannabis Industry Awaits Ruling in Long-Running Lawsuit over Federal Preemption.” *Marijuana Business Daily*, March 16. Available at tinyurl.com/zn8tfmw.

ZONING PRACTICE
AMERICAN PLANNING ASSOCIATION

205 N. Michigan Ave.
Suite 1200
Chicago, IL 60601-5927



HOW DOES YOUR COMMUNITY
REGULATE MARIJUANA LAND
USES?

8

CITY COUNCIL WORKSHOP SUMMARY
September 14, 2020

Meeting Convened: 5:35 p.m. in the City Hall Auditorium

Meeting Adjourned: 7:12 p.m.

City Councilmembers present: Kraig Andrews, Chuck McDaniel, Phyllis Norris, Phil Pe'a, Anna Stout, Rick Taggart, and Mayor Duke Wortmann.

Staff present: City Manager Greg Caton, City Attorney John Shaver, Police Chief Doug Shoemaker, Finance Director Jodi Welch, Senior Assistant to the City Manager Greg LeBlanc, Management Analyst Johnny McFarland, Fire Chief Ken Watkins, Community Development Director Tamra Allen, Public Works Director Trent Prall, and City Clerk Wanda Winkelmann.

Mayor Wortmann called the meeting to order.

Agenda Topic 1. Discussion Topics

a. Discussion regarding Cannabis Regulation and Licensing within the City of Grand Junction

City Manager Caton introduced the topic. Police Chief Shoemaker reviewed the staff report, including the questions posed:

1. Should retail sales of medical and recreational marijuana be allowed? If so, where and/or with what conditions?
2. Should cultivation of marijuana be allowed. If so, where and/or with what conditions?
3. Should processing of marijuana be allowed? If so, where and/or with what conditions?
4. Should consumption of marijuana in "hospitality establishments" be allowed? If so, where and/or with what conditions?
5. Should a working group be formed to assist in proposed draft land use (and/or other) regulations?

Mayor Wortmann called for citizen comment.

Robin and Jeremy Cleveland spoke of their experience regarding an accident involving a driver who was under the influence of marijuana. They are not in favor of legalizing sales in GJ.

Dr. Kathleen Wilson discussed the effects of marijuana on young people, especially males and is opposed to allowing recreational sales.

Dan Ramsey spoke about the positive effects of cannabis and believes it needs to be regulated.

Lisa Pride stated that silence equals consent and commented on the negative impact of marijuana in the workplace.

Steve Wilson discussed the negative impacts of marijuana and the cause of diseases.

Ed Kowalski expressed concern about people speeding while high.

Liz Wise described her life as a child and her father's experience in Vietnam. She believes marijuana stores should be located in Grand Junction so purchasers don't have to drive to Palisade or DeBeque.

Darlene Distello provided handouts to Council regarding accident rates. She discussed an editorial in the *Denver Post* about Colorado accident rates.

Lisa Vin stated she has been a nurse for 52 years and has seen horrific impacts of marijuana use on families.

Charles Baines discussed the impact of marijuana on his four sons and how drugs can increase crime rates. He is opposed to recreational marijuana businesses.

Robbie Koos stated her support for a ballot measure, noted some marijuana products can be useful, and supports a tax that is earmarked for youth programming.

Sydney Norwood described how medical marijuana has helped her combat degenerative disc disease and she is no longer on oxygen.

Jessie Wise is an advocate for cannabis and discussed the effects of alcohol and meth on users.

Anton Abbott noted he was a marijuana user in his teens and is now opposed to its use.

Caleb Ferganchick encouraged research of how other local municipalities have addressed recreational marijuana businesses.

Diane Cox presented a picture of a brain scan of a typical brain vs. the brain of a marijuana user. She stated that no amount of revenue makes marijuana use okay.

Molly Strong stated that marijuana impacts thought processes and the motivation for youth to participate in social/after-school activities.

Parker Graham noted that marijuana legalization makes it safer for everyone.

Scott Beilfuss reported that Colorado is 50th in the United States for education and 17% of Mesa County residents live in poverty. He is curious how a marijuana question is placed on the ballot.

Mark Sills owns a dispensary in Parachute and noted the average age of his customers is between 40-50 years.

Rene Grossman discussed the revenues for marijuana sales. If a question is placed on the April ballot, she recommends including a question for taxing marijuana, limiting the number of available licenses, and those granted a license would be selected on merit (not via lottery).

Merle Miller does not support legalization of recreational marijuana businesses.

Cindy Savine stated her father's tumor shrunk as a result of cannabis use. She is a lobbyist and stated that marijuana is safer than alcohol. She recommends a merit system be used to choose those businesses granted a license.

Meghan Garcher is a CMU student working on a project team reviewing hemp production. She discussed the film, "Reefer Madness" and noted the drug war did not curb illegal use.

Mayor Wortmann closed citizen comments.

City Manager Caton reiterated staff's recommendation for a working group.

Attorney Shaver outlined the options for the April ballot:

1. Include a marijuana tax measure on the ballot (which would be a TABOR question).
2. City Council could place a referred measure on the ballot for marijuana businesses.
3. Citizens could petition to place an initiated measure on the ballot.

Citizen Diane Cox inquired about the past efforts by citizens to place a question on the ballot. The effort in 2016 was not successful and she wonders why this question is back on the table.

Councilmember Taggart expressed support for a working group and would like to see reliable data presented. Council was in agreement for the formation of a working group.

Agenda Topic 2. City Council Communication

Councilmember Taggart requested a future discussion about Catholic Outreach's request that was made earlier this year.

Councilmember Stout noted comments were made about individuals who are homeless and requested a workshop to review the support the City of Grand Junction has given service providers.

Councilmember Norris and Mayor Wortmann requested a memo summarizing this support. Councilmember Stout noted the importance of being able to ask questions of providers to ensure the City is taking a proactive approach. Councilmember McDaniel is on the Homeless Coalition and will send the meeting minutes to Council. Councilmember Taggart would like to know how COVID-19 has impacted services for individuals who are homeless.

Agenda Topic 3. Next Workshop Topics

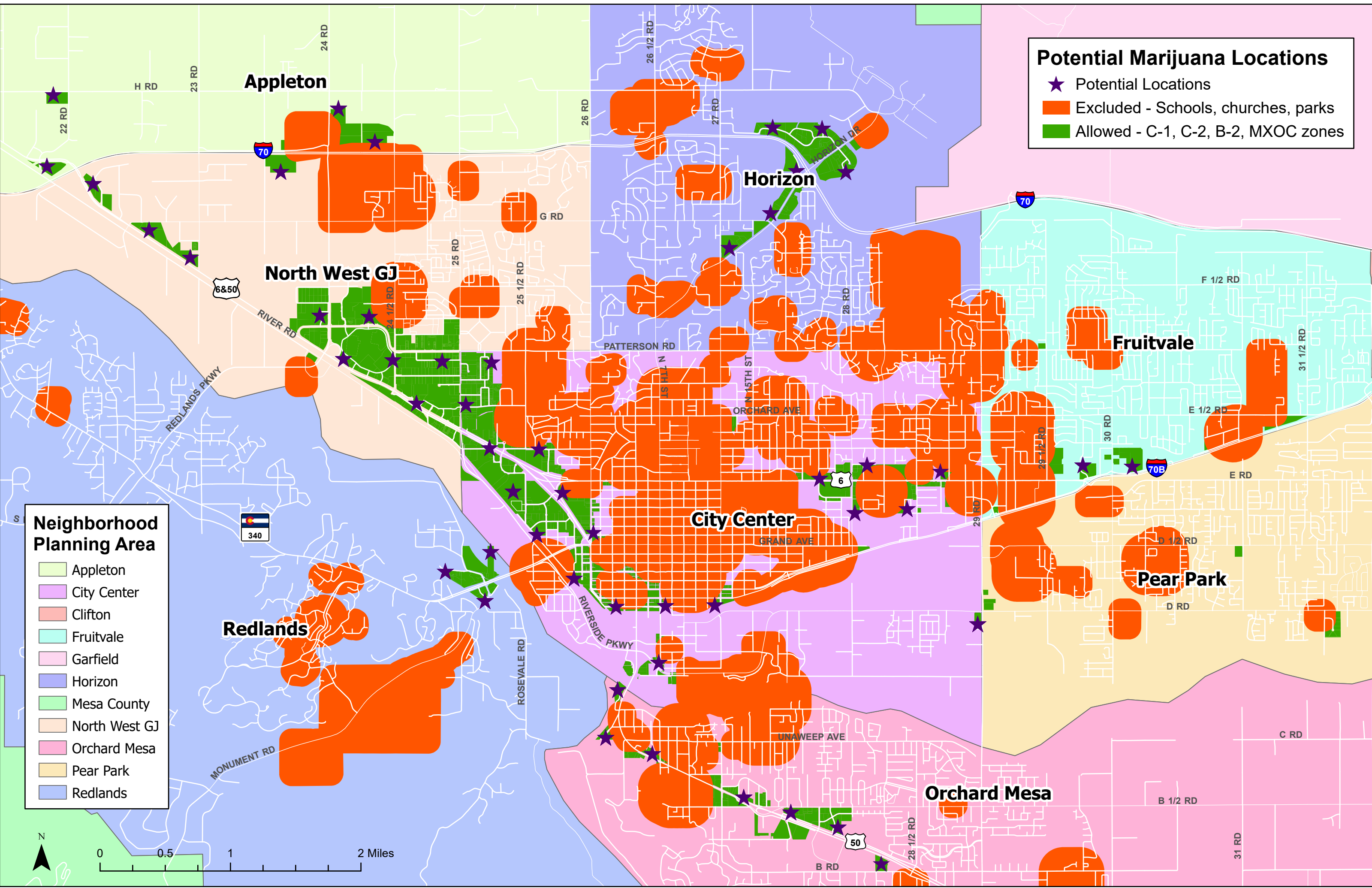
City Manager Caton stated the next workshop on October 5 will be a presentation of the major operating budgets. The workshop will start at 4 p.m. and will last approximately four hours.

Agenda Topic 4. Other Business

There was none.

Adjournment

The Workshop adjourned at 7:12 p.m.

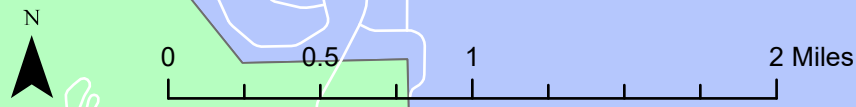


Potential Marijuana Locations

- ★ Potential Locations
- Excluded - Schools, churches, parks
- Allowed - C-1, C-2, B-2, MXOC zones

Neighborhood Planning Area

- Appleton
- City Center
- Clifton
- Fruitvale
- Garfield
- Horizon
- Mesa County
- North West GJ
- Orchard Mesa
- Pear Park
- Redlands



Potential Marijuana Locations

- Excluded - Schools, churches, parks
- Allowed - C-1, C-2, B-2, MXOC zones

Neighborhood Planning Area

- Appleton
- City Center
- Clifton
- Fruitvale
- Garfield
- Horizon
- Mesa County
- North West GJ
- Orchard Mesa
- Pear Park
- Redlands

