

RESOLUTION 2010-73

A RESOLUTION APPROVING BOULDER COUNTY LAND USE DOCKET #DC-10-0002: PROPOSED TEXT AMENDMENTS TO ARTICLE 4 OF THE BOULDER COUNTY LAND USE CODE, TO ADD A NEW MEDICAL MARIJUANA CENTER USE AS SECTION 4-512.G. OF THE LAND USE CODE, AND INCLUDING ASSOCIATED AMENDMENTS TO SECTION 4-802.A. (SITE PLAN REVIEW), SECTION 4-1202.B. (VARIANCES), AND SECTION 4-516.L. (HOME OCCUPATIONS) OF THE LAND USE CODE

WHEREAS, pursuant to C.R.S. Sections 30-28-112 and -116, as amended, the Board of County Commissioners of Boulder County ("the Board") is authorized to amend the text of County's Zoning Regulations in accordance with the procedures set forth in those provisions and the applicable County regulations; and

WHEREAS, pursuant to C.R.S. Section 30-28-133, as amended, the Board is authorized to amend the text of the County's Subdivision Regulations in accordance with the procedures set forth in those provisions and the applicable County regulations; and

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

WHEREAS, pursuant to the above-referenced authority, by Resolution 94-185 adopted October 18, 1994, effective October 19, 1994, the Board approved a unified Boulder County Land Use Code ("the Land Use Code" or "Code"), which the Board first amended by Resolution 95-27 effective March 9, 1995, and has amended on subsequent occasions thereafter; and

WHEREAS, in Docket #DC-10-0002 ("the Docket"), the Boulder County Land Use Department proposed certain additional text amendments to Article 4 (Zoning) of the Code, this time to add a new use to the Retail and Personal Service Uses listed in Article 4-504 of the Code, known as "Medical Marijuana Center" (to be new Section 4-512.G. of the Code), and including companion amendments to the Site Plan Review change of use provisions in Section 4-802.A.11, to the Variance provisions of Section 4-1201.B.1., and to the Home Occupation use provisions of Section 4-516.L. of the Code (collectively, "the Proposed Amendments"), all as set forth in the memorandum and recommendation of the County Land Use Department to the Board dated June 8, 2010 ("the Staff Recommendation"); and

WHEREAS, as further elaborated in the Staff Recommendation, the Proposed Amendments will categorize businesses that grow and sell medical marijuana pursuant to state law, as "Medical Marijuana Centers," which will be allowed by right in the Transitional, Business, Commercial, Light Industrial, and General Industrial Zoning Districts, subject to the additional provisions and limitations of the Proposed Amendments; and

WHEREAS, uses involving the processing or manufacturing of products containing medical marijuana, such as edibles, beverages, and tinctures or creams, will not be classified as a Medical Marijuana Center under the Proposed Amendments, but will be considered a Light Industrial use under the existing provisions of Section 4-505.C. of the Land Use Code, and thus allowed by right in the Light Industrial and General Industrial Zoning Districts only; and

WHEREAS, the Proposed Amendments also clarify that authorized, accessory home occupations involving the growing, processing, and/or use of medical marijuana, are confined to activities carried out solely by residents who are legal medical marijuana patients or are legal primary caregivers of patients under state law, and do not extend to the growing, sale, or provision of medical marijuana or infused products to or for other persons, medical marijuana centers, or other medical marijuana-related businesses; and

WHEREAS, the Boulder County Planning Commission ("the Planning Commission") held a duly-noticed public hearing on the Proposed Amendments on May 19, 2010, and recommended approval of the Proposed Amendments and certified the Docket for action to the Board; and

WHEREAS, on June 8, 2010, the Board held a duly noticed public hearing on the Docket as certified to it by the Planning Commission ("the Public Hearing"), at which time the Board considered the Staff Recommendation and the documents and testimony presented by the County Land Use Department staff, and by numerous members of the public present to speak to the Docket; and

WHEREAS, based on the Staff Recommendation and the Public Hearing, the Board finds that the Proposed Amendments, specifically in the form recommended by the Planning Commission, and including the minor and clarifying changes requested by the Board at the Public Hearing, all as specifically set forth in Exhibit A to this Resolution, below, meet the criteria for text amendments contained in Article 16 of the Land Use Code, in that the existing text is in need of amendment; the Proposed Amendments are not contrary to the intent and purpose of the Land Use Code; and the Proposed Amendments are in accordance with the Boulder County Comprehensive Plan; and

WHEREAS, the Board thus determines that the Proposed

Amendments, as approved and set forth in Exhibit A to this Resolution, below, should be and hereby are incorporated into the Land Use Code, effective as of the date of the Public Hearing (June 8, 2010).

NOW, THEREFORE, BE IT RESOLVED that the Proposed Amendments, specifically in the form set forth in Exhibit A to this Resolution, below, are hereby approved for incorporation into the Land Use Code, to be effective beginning on June 8, 2010.

BE IT FURTHER RESOLVED that, pursuant to C.R.S. Section 30-28-125, the Board authorizes the Clerk to the Board to arrange for the immediate transmittal of this Resolution, with its Exhibit A, to the County Clerk and Recorder, for filing and appropriate indexing with that official, so that the Clerk and Recorder may make this Resolution, with its Exhibit A, accessible to the public. This transmittal should state recording Reference **No. 2735571**, the recording of the Boulder County Land Use Code on November 4, 2005, which this transmittal supplements and amends.

A motion to approve the Proposed Amendments, as set forth above, was made at the Public Hearing by Commissioner Pearlman, seconded by Commissioner Toor, and passed by a 3-0 vote.

ADOPTED on this 10th day of June, 2010, to be effective on the 8th day of June, 2010 (Public Hearing date).

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



Cindy Domenico, Chair



Ben Pearlman, Vice Chair



Will Toor, Commissioner



ATTEST:


Clerk to the Board

EXHIBIT A TO RESOLUTION 2010-73: TEXT AMENDMENTS TO ARTICLE 4 OF THE BOULDER COUNTY LAND USE CODE, TO ADD A NEW MEDICAL MARIJUANA CENTER USE AS SECTION 4-512.G. OF THE LAND USE CODE, AND INCLUDING ASSOCIATED AMENDMENTS TO SECTION 4-802.A. (SITE PLAN REVIEW), SECTION 4-1202.B. (VARIANCES), AND SECTION 4-516.L. (HOME OCCUPATIONS) OF THE LAND USE CODE

I. Add a new zoning use to the existing Retail and Personal Service Uses Category:

4-512.G. Medical Marijuana Center

1. Definition: A business that grows, sells, and/or distributes medical marijuana as authorized under Section 14 of Article XVII of the Colorado Constitution and other applicable state law.
2. Districts Permitted: By right in T, B, C, LI, and GI.
3. Parking Requirements:
 - a. One space per 200 square feet of floor area used for office, sales, or personal service operations.
 - b. One space per 1,000 square feet of floor area used for growing, warehousing, or storage operations.
4. Loading requirements: One loading space for 10,000 or more square feet of floor area.
5. Additional Provisions:
 - a. This use must obtain and maintain all necessary state and local permits. Regardless of when they are established, businesses operating for the purpose of cultivation, manufacture, or sale of medical marijuana or medical marijuana-infused products, as defined in Colorado House Bill 10-1284, are and will be subject to the provisions and limitations stated in H.B. 10-1284. These provisions and limitations include those in the legislation, and any state and County requirements promulgated under the legislation. Such businesses or uses, even if allowed under this Section 4-512.G. or prior provisions of this Code, are subject to termination if they cannot meet the requirements of, or legally operate under, H.B. 10-1284.
 - b. This use may include the accessory sale of products containing medical marijuana to the extent authorized by applicable state law.
 - c. One single-family dwelling to house the owner or manager of the Medical Marijuana Center and their family will be considered customary and incidental as part of this use, to the extent authorized by state law.
 - d. Except in the LI and GI Zoning Districts, this use shall not be located within 500 feet of another Medical Marijuana Center (including a Center in the

- unincorporated County or a substantially similar facility in an adjacent municipality), as measured from the closest point of the subject parcel lines.
- e. This use shall not be located within 1,000 feet of an alcohol or drug treatment facility, a licensed child care facility, or an educational facility with students below the college grade level (including facilities in the unincorporated County or substantially similar facilities in an adjacent municipality), as measured from the closest point of the subject parcel lines.
 - f. A change of use from an existing Retail or Personal Facility Use under Art. 4-512.K. of this Code, or from an existing Professional Office Use under Art. 4-509.A. of this Code, to a Medical Marijuana Center allowed under this Article 4-512.G., shall not require site plan review approval under Article 4-802.A. of this Code.
 - g. Any Medical Marijuana Center established or operating in the unincorporated County as of August 1, 2010, shall register with the County Land Use Department by that date. Any Medical Marijuana Center established or operating after August 1, 2010, shall register with the County Land Use Department within 30 days after establishment or commencement of operations. Registration information shall include, but is not limited to, the legal name of the business, its owner, and on-site manager; contact information for the owner and manager; date of establishment of the business; description of the nature and extent of the business; and identification of all structures, floor area, and property occupied by or associated with the business. Registration shall not be required for any Medical Marijuana Center which receives a County license on or after July 1, 2011 pursuant to Colorado House Bill 10-1284.

Re-letter ensuing uses in Article 4-512, accordingly.

II. Add the following (bolded) language to existing Section 4-802.A.11 (providing that site plan review shall not be required for):

- 11. A change of use of a parcel, except to residential, **or except from an existing Retail or Personal Service Facility under Article 4-512.K. of this Code or from an existing Professional Office under Article 4-509.A. of this Code to a Medical Marijuana Center under Article 4-512.G. of this Code.**

III. Add the following subsection g. (bolded) to existing Section 4-1202.B.1. of the Code (providing that the Board of Adjustment shall not grant requests for variances from the provisions of the Code for:)

- a. a use in a zoning district other than those uses as allowed in Section 4-100 of this Code;
- b. a variance to the minimum lot area requirements or maximum gross density;
- c. the alteration of any definition;
- d. a substantial modification to any planned unit development or special use allowed [or] approved by the County Commissioners;
- e. any increase in the base flood level; [~~delete "or]~~
- f. a change in the height or yard requirements which could be obtained, or have [sic.] been denied, through special review; [**add: "or"]**
- g. **A decrease in the spacing requirements for Medical Marijuana Centers under the Additional Provisions of Article 4-512.G. of this Code.**

IV. Add the following Subsection i. (bolded) to existing Section 4-516.L. of the Code (governing Home Occupations):

4-516 L. Home Occupation

1. Definition: A home occupation shall mean an accessory use consisting of a vocational activity conducted inside a dwelling unit or its accessory structures, and used only by the individuals who reside therein and one employee, provided that the home occupation:
- a. does not result in noise or vibration, light, odor, dust, smoke, or other air pollution noticeable at or beyond the property line,
 - b. includes only the incidental sale of stocks, supplies, or products,
 - c. is clearly subordinate to the use of the lot for dwelling purposes and does not change the character of the lot,
 - d. does not include the outside storage of goods, materials, or equipment,
 - e. has signage limited to a nonilluminated identification sign two square feet or less in size,
 - f. does not exceed one-half the total floor area of the dwelling including activities carried out in an accessory structure, with the exception of child care which may exceed this limit,
 - g. does not produce traffic volumes exceeding that produced by the dwelling unit by more than 16 average daily trips or a

maximum of 30 trips during any 24 hour period, and
h. does not include nursing homes, restaurants, vehicle repair businesses, or boarding houses.

i. does not include operations conducted within a dwelling unit that grow medical marijuana, or prepare medical marijuana-infused products, for sale to Medical Marijuana Centers or other medical-marijuana-related businesses. Medical marijuana operations in dwelling units shall be confined to residents growing their own medical marijuana or preparing their own infused products, and to individual primary caregivers growing medical marijuana or preparing infused products for their registered patients, as authorized under state medical marijuana law.

2. Districts Permitted: By right in all districts

3. Parking Requirements: One off-street space

4. Loading Requirements: None

5. Additional Provisions:

a. In subdivisions, no more than one vehicle associated with the use, registered as a passenger vehicle, light truck, recreational truck, or farm truck may be parked outside on the property.

b. The number or type of registration for vehicles associated with the use is not limited on properties located outside subdivisions.