



Arapahoe County

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Board Summary Report

File #: 22-182

Agenda Date: 3/21/2022

Agenda #:

To: Board of County Commissioners

Through: Ron Carl, County Attorney

Prepared By:

John Christofferson, Deputy County Attorney

Presenter: John Christofferson, Deputy County Attorney

Subject:

1:30 PM *Marijuana Land Use in Unincorporated Arapahoe County

Purpose and Request:

Request direction from the Board of County Commissioners regarding possible changes to the current marijuana land use policy including: allowing marijuana stores to move location, increase in square footage of stores, and increasing the number of marijuana store licenses; and allowing marijuana grow facilities in eastern unincorporated Arapahoe County.

Background and Discussion:

The Board of County Commissioners (BoCC) adopted Ordinance 2020-02 an Ordinance Establishing Limited Retail Marijuana Stores in Unincorporated Arapahoe County (the “Marijuana Ordinance”) and concurrently adopted revisions to the Land Development Code Section 3-3.5 Marijuana Land Uses (the “Marijuana LDC”) with both effective as of July 30, 2020. The BoCC subsequently adopted the Marijuana Licensing Policy (the “Marijuana Policy”) on September 22, 2020. The Marijuana Ordinance and Marijuana LDC authorize only four (4) specific marijuana store locations in unincorporated Arapahoe County. These locations are considered legal nonconforming use locations, which basically means that the locations cannot alter their footprint or change addresses; nor can they be repaired or replaced in the event of destruction or damage by any cause if the cost to repair exceeds more than 50% of the value of the structure. Currently, all four of the locations have a Medical Marijuana Store License and three of the locations also have a Retail Marijuana Store License.

Both staff and some Commissioners have been approached by current licensees and people in the industry about potential changes to the Marijuana Ordinance and Marijuana LDC to allow the current locations to change where they are located and to allow grow operations in the eastern portion of unincorporated Arapahoe County.

The following are considerations for the BoCC to contemplate and provide direction.

Marijuana Store Location Change

State law authorizes the BoCC to limit the number of licenses and designate the location where a marijuana store is located. The four locations are allowed as legal nonconforming uses that were established and in business prior to the adoption of land use regulations prohibiting such uses in unincorporated Arapahoe County. In December 2015, the Board approved amendments to those regulations to also permit recreational sales at those specific locations, but no other locations and as non-conforming uses, the use cannot be expanded, relocated, or replaced or repaired if significantly damaged.

Generally commercial retail uses are permitted under the Land Development Code in the Business zone districts B-3, B-4, and B-5. Retail sales are only permitted as accessory uses in the industrial zone districts I-1 and I-2, but not as a primary use. However, processing, packaging and selling of “an agricultural commodity w/manufacturing” is an allowed use in the I-1 and I-2 zone districts. Accordingly, the potential zoned districts where a marijuana store could be located are the B-3, B-4, and B-5. Allowing retail sales of marijuana as a primary use in I-1 or I-2 zone districts would probably require amendment of the Land Development Code to include that use.

Current state law prohibits a marijuana store from being located within one thousand feet of a school; an alcohol or drug treatment facility; the principal campus of a college, university, or seminary; or a residential child-care facility. The BoCC may increase the distance restrictions or may eliminate one or more types of schools, campuses, or facilities from the distance restriction. The distances referred above are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which medical marijuana is to be sold, using a route of direct pedestrian access. A map of potential zoned districts along with a 1,000-foot radius circles around the facility restrictions will be provided at the study session.

If the BoCC provides direction to allow the four current locations to move, staff would work to draft revisions to the Marijuana Ordinance and Marijuana LDC. Much of the following two timelines will run concurrently, not consecutively.

Timing for consideration of an amendment to the Marijuana Ordinance includes time to draft the ordinance, study session with the BoCC, publication of notice of the first reading of the draft ordinance, first reading, publication of notice of the second reading, second reading, publication that the ordinance was adopted, and thirty-days after adoption for the ordinance to become effective. The estimated time for this process is a minimum of 3-4 months.

Timing for consideration of an amendment to the Marijuana LDC includes time to draft the revised Land Development Code provisions, study session with the BoCC, sending referral request to agencies for comments, publication of notice of a meeting of the Planning Commission, meeting of the Planning Commission, publication of notice of the meeting of the BoCC, and meeting of the BoCC. The estimated time for this process is a minimum of four (4) months.

Based on direction from the BoCC, staff could bring forward recommended locations and a more detailed process for completing revisions to the Marijuana Ordinance and Marijuana LDC.

Potential Marijuana Store Size Limitations of New Locations

If the BoCC decides to move forward with considering allowing the current marijuana stores to change locations, the BoCC could consider store size restrictions. State law authorizes the BoCC to restrict the size of a marijuana store. The original locations were chosen by the original owners and are all located in a single suite within commercial buildings with multiple suites. Current and former licensees have made inquiries about opportunities to increase the size of their locations. As a nonconforming use the current locations are not allowed to expand.

Based on the BoCC's direction, staff could discuss sizing requirements/limitations with nearby municipalities and neighboring counties and provide a recommendation.

Additional Marijuana Store Licenses

If the BoCC decides to move forward with considering allowing current marijuana stores to change locations and size restrictions, the BoCC could consider increasing the number of marijuana store licenses. State law authorizes the BoCC to limit the number of marijuana store licenses. The decision to allow additional licenses would be at the BoCC's discretion. The number of additional licenses might be limited in practice by the allowed zone districts discussed above in conjunction with the distance restrictions. Any increase in the number of licenses may well have a greater impact on law enforcement and the Arapahoe County Sheriff's Office would be involved in subsequent discussions. Additionally, the BoCC would need to decide the process for choosing which entity/entities would receive any new licenses. Such a process could be problematic.

The timeframe to draft and adopt revisions to the Marijuana Ordinance and Marijuana LDC would be larger than discussed above in order to develop a fair and reasonable process for selection of new licenses and to draft appropriate code language.

Based on the BoCC's direction, staff could discuss licensing processes with nearby municipalities and

neighboring counties, and with the Arapahoe County Sheriff's Office to provide a recommendation.

Marijuana Grows in Unincorporated Arapahoe County East of Hayesmount Road alignment

State law authorizes the BoCC to allow marijuana grow operations within unincorporated Arapahoe County. In 2015, the BoCC considered whether to authorize medical marijuana grow operations without retail sales East of the Hayesmount Road alignment. The proposed process for approval of locations was through a Use by Special Review (USR) and located in Business, Industrial, or Agricultural (A-E and A-1) zone districts. The BoCC decided not to move this option forward at that time. This issue has come forward for reconsideration.

State law authorizes the BoCC to allow growing of medical marijuana. Currently the Marijuana LDC authorizes a person residing at the dwelling unit, for such person's own use, or by a primary caregiver on behalf of a patient who resides at the same dwelling unit as the primary caregiver to conduct non-commercial growing, cultivation, storage, or production of marijuana or marijuana products only as a non-primary use in an agricultural (A-1, AE), rural residential (RR-A, RR-B, RR-C), or residential (R-1-A, R-1-B, R-1-C, R-1-D, R-2-A, R-2-B, or R-M), obsolete residential (R-2, R-3, R-3S, R-4, R-5), or the residential portion of a PUD zone districts (including those originally zoned in a R-P, R-PSF, R-PM, R-PH, MU, or SH), and may only be conducted within a dwelling unit (and not on a porch or within a shed, greenhouse or other such structure). In no event shall more than six plants, with three or fewer being mature flowering plants, be grown or cultivated at any one time by each person or primary caregiver residing at such dwelling unit, up to a maximum of 12 plants total per dwelling unit.

In some instances, an individual may receive a recommendation for marijuana plants in excess of twelve or a primary caregiver could support more than one individual with a medical marijuana recommendation. In unincorporated Arapahoe County an individual or primary caregiver would still be limited to twelve marijuana plants. As discussed above, the Marijuana Ordinance and Marijuana LDC would need to be amended. The proposed process for approval of such locations again would be through a Use by Special Review (USR) process requiring law enforcement inspections.

State law authorizes the BoCC to allow an individual with a medical marijuana card or a primary care giver to grow up to the number of recommended medical marijuana plants. Additionally, the BoCC could also allow medical and/or retail marijuana cultivation facilities (commercial grow operation that sells to marijuana stores), medical and/or retail marijuana products manufacturers (manufacturing of marijuana that can include grow operations); and a medical and/or retail marijuana testing facilities (growing and testing of marijuana). The state regulates such licensees, which includes cultivation and seed to sale tracking, and security requirements.

Based on the BoCC's direction, staff could discuss grow operation regulations and licensing with nearby municipalities and neighboring counties, and with the Arapahoe County Sheriff's Office to provide a recommendation.

Fiscal Impact: There is no fiscal impact to the BoCC providing direction on these items. Any impacts to specific direction will be brought back to the BoCC at a future meeting.

Alternatives: The BoCC could decide not to make any changes to the Marijuana Ordinance and Marijuana LDC.

Alignment with Strategic Plan:

- ☐ Be fiscally sustainable
- ☐ Provide essential and mandated service
- ☒ Be community focused

Staff Recommendation: N/A.

Concurrence: N/A.