

**ARAPAHOE COUNTY PLANNING COMMISSION
PUBLIC HEARING**

August 20, 2024
6:30 P.M.

**SUBJECT: LDC24-005 RETAIL MARIJUANA STORES AND MARIJUANA
PRODUCTION AT DEA-AUTHORIZED FACILITIES AMENDMENT**

JASON REYNOLDS, PLANNING DIVISION MANAGER

PURPOSE AND REQUEST

This county-initiated project proposes amending the Land Development Code (LDC), specifically, Section 3-3.5, Marijuana Land Uses. The proposed changes would allow an existing commercial marijuana store to relocate within the same building without triggering a Use by Special Review process. The second proposed change would allow marijuana manufacturing and research facilities in industrially zoned areas, provided that the facility is registered with the Drug Enforcement Administration (DEA). Staff is requesting a recommendation of approval from the Planning Commission on the draft regulations (Attachment 1).

BACKGROUND

Earlier this year, Kazmira, a manufacturer of hemp-derived CBD products located in unincorporated Arapahoe County, asked the Board of County Commissioners to support Kazmira's application for a federal marijuana testing permit from the DEA. Kazmira made this request prior to proposed federal reclassification of marijuana to a Schedule 3 drug. However, if the proposed federal reclassification of marijuana to a Schedule 3 drug is approved, Kazmira has advised that will not materially change their application for a DEA permit. Indeed, it is likely that additional federally authorized marijuana manufacturing facilities will be needed to supply product for medical research. The Land Development code currently prohibits all marijuana uses except for the four existing dispensaries in unincorporated Arapahoe County and a marijuana product manufacturing facility, even a DEA-authorized facility, is not permitted under the marijuana regulations.

The DEA authorization process is separate from Colorado's medical and retail marijuana system. If a DEA facility is approved, it would receive marijuana grown off-site from a federally licensed grow facility. The local facility would manufacture marijuana products, which would be transferred by the DEA to federally licensed researchers. The product would not be sold on any commercial market and the marijuana used for the manufactured products would be transferred both to and from the site under custody of the DEA.

On May 6, 2024, the Board discussed Kazmira's request at a study session. The Board directed staff to amend the Land Development Code to allow DEA-authorized marijuana facilities and chose to send a letter of support for Kazmira's DEA application (Attachment 2). After reviewing the code language for potential changes, staff identified a discrepancy in the existing commercial marijuana code that required a public process to relocate an existing dispensary within the same building while allowing expansions to proceed administratively.

DISCUSSION AND PROPOSED CHANGES

Staff is proposing the following changes to the LDC:

Retail Marijuana Store Relocation within the Same Building:

The land development code allows a maximum of four commercial marijuana stores in unincorporated Arapahoe County. The Land Development Code allows those existing stores to expand their premises with a building permit but requires a Use by Special Review process if they want to relocate within the same building.

In this hypothetical example, a marijuana store could expand into two additional suites without a public hearing process:



However, moving two doors down would require a public hearing:



The proposed code change would allow both of these scenarios with an administrative review process.

Allow Marijuana Product Manufacturing in DEA Authorized Facilities:

The Arapahoe County Land Development Code's marijuana section does not address the potential for DEA authorized marijuana manufacturing; it defines marijuana broadly and prohibits marijuana-related uses with few exceptions. The proposed code changes would allow DEA authorized facilities as a permitted use in the industrial zone districts (I-1 light industrial, I-2 heavy industrial, and PUD zones that allow industrial uses), where other similar drug manufacturing/processing uses are allowed. The draft code requires the facility to conduct all activity within the facility and to operate in a manner that does not cause odors, smoke, heat, glare, etc. that would be detectable at the property line or an adjacent public area. It also requires that the facility maintain DEA registration in good standing, which must be furnished upon demand by the County. If a proposed facility does not have DEA authorization, it would not be allowed.

PUBLIC AND REFERRAL COMMENTS

The proposed regulations (Attachment 1) were posted on the County website for public comment on July 25, 2024. Staff referred the draft regulations to County agencies and nearby jurisdictions; Attachment 3 summarizes the responses; Centennial asked that Arapahoe County prohibit DEA-licensed facilities in the unincorporated area south of Arapahoe Road between I-25 and Parker Road (previously, Arapahoe County prohibited commercial marijuana businesses in that area). Arapahoe County staff does not recommend making that change. If marijuana is reclassified to a Schedule 3 drug as proposed by the federal government, it would be regulated similarly to other Schedule 3 drugs like testosterone, acetaminophen with codeine, anabolic steroids, and estrogen. The land use impacts of manufacturing all those substances are similar, and the use is compatible with industrial areas.

STAFF FINDINGS

The proposed changes would allow existing marijuana stores to relocate within the same building through an administrative process, increasing flexibility for business owners. Allowing DEA authorized facilities in industrial areas is consistent with other industrial/manufacturing uses.

STAFF RECOMMENDATION

Considering the findings and other information provided herein, Staff recommends approval of Case No. LDC24-005, marijuana regulations, subject to the following stipulation:

1. Staff, with the approval of the County Attorney, may correct typographical errors and make such revisions to the Code amendment as are necessary to incorporate the approved amendment into the Land Development Code for publication.

ATTACHMENTS

1. Proposed LDC Amendments
2. Arapahoe County Letter of Support for Kazmira's DEA Application
3. Outside Referral Summary and Comments