

**RESOLUTION NO.**            It was moved by Commissioner \_\_\_\_\_ and duly seconded by Commissioner \_\_\_\_\_ to adopt the following Resolution:

WHEREAS, Section 29-20-101, *et seq.*, Colorado Revised Statutes (C.R.S.), and Sections 30-28-113, -116 and -133, C.R.S., provide broad land use authority within the unincorporated territory of Arapahoe County to the Board of County Commissioners (the Board) and further provide that the Board has the power to adopt and amend the zoning regulations and subdivision regulations after notice to and recommendation from the Planning Commission, all as set forth in such statutes; and

WHEREAS, the Board has adopted the Arapahoe County Land Development Code, which establishes the zoning and subdivision regulations for unincorporated Arapahoe County, and from time to time the Board considers proposed amendments to the Land Development Code and such zoning and subdivision regulations, all in accordance with such statutory authority; and

WHEREAS, the Department of Public Works and Development, Planning Division staff, has made recommendations for certain amendments to the Arapahoe County Land Development Code, Case No. LDC22-004, concerning marijuana land uses, and forwarded such proposed amendments to the Arapahoe Planning Commission for review and recommendation; and

WHEREAS, on October 18, 2022, the Planning Commission held a duly noticed public hearing, heard such public comment as was presented, and reviewed and considered the Planning Division staff's proposed recommended amendments to the Land Development Code, and following such public hearing, a majority of the Planning Commission voted to recommend approval of the proposed amendments to Land Development Code; and

WHEREAS, Notice of a Public Hearing to be held on November 8, 2022 on the proposed amendments to the Land Development Code was published on October 20, 2022 in the Centennial Citizen, the Englewood Herald, and the Littleton Independent, newspapers of general circulation in the County, and was also published on October 18, 2022 in the I-70 Scout, a newspaper with circulation in the eastern part of Arapahoe County; and

WHEREAS, on November 8, 2022, in accordance with the published notice, the Board held a Public Hearing on the proposed amendments to the Land Development Code; and

WHEREAS, evidence was presented to establish that all notice and other procedural requirements required by law for amending the Land Development Code were followed, and to establish the Board's jurisdiction to hear and decide on the proposed amendments; and

WHEREAS, Planning Division and Legal staff presented and explained the proposed amendments, and responded to Board questions and comments concerning the proposed amendment; and

WHEREAS, following the presentation by County staff, the Chair opened the Hearing for public comment and the Board heard and considered such public comment as was presented on the proposed amendment; and

WHEREAS, the Board hereby makes the following findings:

A. The Board finds and determines:

1. That the statutory jurisdictional requirements have been met.

2. That the Public Hearing was opened and that the public had opportunity for public input and comment on the proposed amendments.
  3. That the Board has jurisdiction to hear, consider and act upon the proposed amendments to the Land Development Code.
  4. That the proposed amendments to the Land Development Code are consistent with the Arapahoe County Comprehensive Plan.
- B. The Board further finds and concludes that the proposed amendments to the Land Development Code are appropriate and lawful land use regulations for the unincorporated territory of Arapahoe County, that the proposed amendments will promote the community's interest in reasonable stability in zoning and subdivision regulations, and that the proposed amendments are in the public interest and for the public good.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Arapahoe County, Colorado to adopt the following revisions to the Land Development Code:

### 3-3.5. Marijuana Land Uses

#### A. INTENT

To provide regulations pertaining to the commercial and non-commercial use of land, buildings and structures for the purpose of growing, selling, producing, distributing, manufacturing, and consuming marijuana and marijuana products.

#### B. GENERAL: MARIJUANA LAND USES NOT ALLOWED

The use of land, buildings, or structures to grow, produce, cultivate, sell, dispense, distribute, store, test, or manufacture marijuana and/or marijuana products, or as a marijuana club, is not allowed or permitted throughout unincorporated Arapahoe County, except to the extent specifically identified in Section 3-3.5.C, below.

#### C. EXCEPTIONS

##### 1. Commercial Marijuana Store.

An exception to the prohibition of marijuana land uses is the Commercial Marijuana Store, provided that, as of August 1, 2022, the store was licensed, operating, and open to the public in compliance with all applicable State and County laws and regulations, including but not limited to the provisions of the Colorado Constitution, the Colorado Marijuana Code, the Arapahoe County Land Development Code, and the Arapahoe County Marijuana Licensing Policy.

##### a. Limit on Commercial Marijuana Stores Allowed In Unincorporated Arapahoe County.

No more than four (4) commercial marijuana stores are permitted to operate within unincorporated Arapahoe County. For purposes of this regulation, a commercial marijuana store is considered as counting toward this limit whether the store is licensed for medical sales only, retail sales only, or both medical and retail sales. Moreover, where multiple commercial marijuana stores are under common ownership and located within unincorporated Arapahoe County, each location is counted towards this limit.

b. Relocation or Replacement of Commercial Marijuana Stores.

Commercial marijuana stores may be moved to alternate locations within unincorporated Arapahoe County or may be replaced by other commercial marijuana stores at other locations in unincorporated Arapahoe County provided all of the following apply:

- 1) Approval of a commercial marijuana store at the alternate or replacement location shall not increase the total number of commercial marijuana stores in unincorporated Arapahoe County above any limitation on the total number of stores as provided in Section 3-3.5.C.1.a above.
- 2) The alternate or replacement location shall:
  - a) Be located in an area zoned B-3, B-4, B-5, I-1, I-2 or in an approved PUD zoned for retail or industrial use that does not otherwise prohibit retail or retail marijuana uses in the PUD;
  - b) Meet the following additional locational requirements:
    - i. Not be located east of the North-South alignment of Watkins Road;
    - ii. Not be located within one quarter mile of the center point of the intersection of East Belleview Avenue and South Quebec Street;
    - iii. Not be located south of Arapahoe Road, between I-25 and South Parker Road;
    - iv. Not increase the number of commercial marijuana stores to more than two within a one and one-half mile radius around any existing licensed commercial marijuana store in unincorporated Arapahoe County;
  - c) Be approved through a Use by Special Review in accordance with Section 5-3.4 of this Land Development Code, except that Use by Special Review approval is not required to replace, repair, or expand within the same structure, subject to any other requirements or restrictions stated in this Land Development Code, or other applicable law, ordinance, policy, or regulation, at an existing approved and licensed location; and
  - d) Be in compliance with all State and County requirements for commercial marijuana uses and facilities, such as and without limitation, setbacks from other uses, store number limitations, distance limitations, or other location restriction established by applicable law or regulation.
- 3) The commercial marijuana store building at the alternate or replacement location shall:
  - a) Not exceed 5,000 square feet in size; and
  - b) Utilize effective measures to mitigate the perceptible odor of marijuana at the exterior of the building at the licensed premises or at any adjoining use of the property.
- 4) The owner shall obtain, prior to any operations, all required State and County licenses or permits, and shall operate in compliance with all applicable State and County laws and regulations, including but not limited to the provisions of the Colorado Constitution, the Colorado Marijuana Code, the Arapahoe County Land Development Code, and the Arapahoe County Marijuana Licensing Policy.

2. Non-Commercial Uses.

An exception to the prohibition of marijuana land uses is the non-commercial growing, cultivation, storage or production of marijuana or marijuana products, by a person, patient or his or her primary caregiver, to the extent that such activity is specifically authorized as a lawful personal use pursuant to Article XVIII, Section 16 of the Colorado Constitution, or is specifically exempt from criminal prosecution under Article XVIII, Section 14 of the Colorado Constitution, is in compliance with all applicable state and local statutes, rules and regulations and with all applicable building and fire codes, and subject to the following:

a. Dwelling Units.

The non-commercial growing, cultivation, storage or production of marijuana or marijuana products may only be conducted 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 district (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) by 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; however, 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.

b. Additional Restrictions.

The marijuana land uses authorized by subsection 3-3.5.C.2 are subject to the following additional restrictions:

- (a) All uses shall be conducted in an enclosed and secure area within a dwelling unit and shall not be visible to the public; and
- (b) All such uses shall not cause odors, smoke, heat, glare or light that is detectable to a person of normal senses beyond the property line of the property upon which the use is being conducted, or in an adjacent dwelling unit or public area.

D. APPLICATION TO EXISTING USES

All marijuana land uses are subject to all restrictions contained within this Section 3-3.5 including those uses that were in existence prior to the adoption of this Section 3-3.5 including any amendments thereto, except, and to the extent, that state or federal law requires that the marijuana land uses be exempt from such restrictions.

Chapter 7 Definitions:

Marijuana, Colorado Marijuana Code and CMC

Shall mean the Colorado Marijuana Code, C.R.S. Section 44-10-101 *et seq.*, as amended.

Marijuana, Commercial

For the purposes of Section 3-3.5, Marijuana Land Uses, commercial shall mean for purposes of obtaining a profit or remuneration.

Marijuana

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 marijuana concentrate. Marijuana shall not mean industrial hemp. Marijuana includes both medical and retail marijuana that is grown, sold, or otherwise used for a purpose authorized by and as defined in Article XVIII, Section 14 of the Colorado Constitution, Article XVIII, Section 16 of the Colorado Constitution, and the Colorado Marijuana Code.

#### Marijuana, Medical

Medical marijuana that is grown, sold, or otherwise used for a purpose authorized by Article XVIII, Section 14 of the Colorado Constitution as defined in the CMC.

#### Marijuana, Retail

Retail marijuana that is grown, sold, or otherwise used for a purpose authorized by Article XVIII, Section 16 of the Colorado Constitution as defined in the Colorado Marijuana Code.

#### Marijuana Store, Commercial

A business licensed under State and County law and regulations to sell marijuana and/or marijuana products. Any business operating as a medical marijuana store, retail marijuana store or as a combined medical and retail marijuana store. See, definitions for medical marijuana store and retail marijuana store.

#### Marijuana Store, Medical

A medical marijuana store includes stores selling marijuana or marijuana products for personal medical use as defined in Article XVIII, Section 14 of the Colorado Constitution, and the Colorado Marijuana Code.

#### Marijuana Store, Retail

A retail marijuana store includes stores selling marijuana or marijuana products for retail recreational use in accordance with Article XVIII, Section 16 of the Colorado Constitution, and the Colorado Marijuana Code.

#### Marijuana Use, Non-commercial

Non-commercial marijuana use shall mean not for the purpose of obtaining a profit or remuneration.

#### Marijuana, Patient

For the purposes of Section 3-3.5, Marijuana Land Uses, patient has the meaning set forth in Colorado Constitution Article XVIII, Section 14(1)(d).

#### Marijuana, Plants

Marijuana plants, seedlings, or any part thereof in a living condition that are lawfully grown or otherwise used for a purpose authorized by Article XVIII, Section 14 of the Colorado Constitution, Article XVIII, Section 16 of the Colorado Constitution, or the Colorado Marijuana Code.

#### Marijuana, Primary Caregiver

Primary caregiver has the meaning set forth in Article XVIII, Section 14(1)(f) of the Colorado Constitution.

## 5-3.4 USE BY SPECIAL REVIEW

### C. APPROVAL CRITERIA

1. The following criteria shall be used to assist in determining that the proposed Use by Special Review is appropriate:
  - a. Recognize the limitations of existing and planned infrastructure, by thoroughly examining the availability and capability of water, sewer, drainage, and transportation systems to serve present and future land uses.
  - b. Assure compatibility between the proposed development, surrounding land uses, and the natural environment.
  - c. Allow for the efficient and adequate provision of public services. Applicable public services include, but are not limited to, police, fire, school, park, and libraries.
  - d. Enhance convenience for the present and future residents of Arapahoe County by ensuring that appropriate supporting activities, such as employment, housing, leisure-time, and retail centers are in close proximity to one another.
  - e. Ensure that public health and safety is adequately protected against natural and man-made hazards which include, but are not limited to, traffic noise, water pollution, airport hazards, and flooding.
  - f. Provide for accessibility within the proposed development, and between the development and existing adjacent uses. Adequate on-site interior traffic circulation, public transit, pedestrian avenues, parking and thoroughfare connections are all factors to be examined when determining the accessibility of a site.
  - g. Minimize disruption to existing physiographic features, including vegetation, streams, lakes, soil types and other relevant topographical elements.
  - h. Ensure that the amenities provided adequately enhance the quality of life in the area, by creating a comfortable and aesthetically enjoyable environment through conventions such as, the preservation of mountain views, the creation of landscaped open areas, and the establishment of recreational activities.
  - i. Enhance the useable open spaces in Arapahoe County, and provide sufficient unobstructed open space and recreational area to accommodate a project's residents and employees.
2. All of the criteria listed in Section 5-3.4.B.1 must be addressed prior to approval of any Use by Special Review requests, and are intended to provide clarity of purpose and direction for applicants, neighbors, concerned citizens, and Arapahoe County decision-makers.
3. In addition to the criteria in Section 5-3.4.B above, the criteria set forth in the Regulations Governing Areas and Activities of State Interest in Arapahoe County ("1041 Regulations") shall also be considered in the evaluation of an application for a Use by Special Review for Major Electrical, Natural Gas, and Petroleum-Derivative Facilities of a Private Company in the A-E, A-1 and I-2 Zone Districts. Part V, sections A. and C., along with Appendix A, of the 1041 Regulations shall be used in determining whether such Use by Special Review should be approved.
4. In addition to the criteria listed in Section 5-3.4.B.1 above, an application for Use by Special Review approval for any commercial marijuana store shall also comply with all requirements and criteria set forth in Section 3-3.5.C. of this Land Development Code.

BE IT FURTHER RESOLVED by the Board of County Commissioners of Arapahoe County that the provisions of the Land Development Code amended by this Resolution are hereby repealed.

BE IT FURTHER RESOLVED by the Board of County Commissioners of Arapahoe County that Planning Division staff with the approval of the County Attorney is hereby authorized to correct typographical errors and make such text revisions to this Code amendment as are reasonably necessary to incorporate the approved amendment into the Land Development Code for publication.

BE IT FURTHER RESOLVED by the Board of County Commissioners of Arapahoe County that the amendments to the Land Development Code approved by this Resolution shall be effective immediately *[or specify date]* and shall be included in the next printing of the Land Development Code.

The vote was:

Commissioner Baker, \_\_\_\_; Commissioner Holen, \_\_\_\_; Commissioner Jackson, \_\_\_\_; Commissioner Sharpe, \_\_\_\_; Commissioner Warren-Gully \_\_\_\_.

The Chair declared the motion carried and so ordered.