

AGENDA ITEM # 3
PLANNING COMMISSION COMMUNICATION FORM

FROM: Bob Keenan, City Planner (Ext. 260)

THROUGH: Tom Leeson AICP, Planning Services Director (Ext. 244)

DATE: September 24, 2009

ITEM: Text Amendment to the Community Development Code
#TXT-09-06

NEXT STEP: If recommended for approval, the first reading of the ordinance will be heard by City Council on October 20, 2009.

<input checked="" type="checkbox"/>	ORDINANCE
<input type="checkbox"/>	RESOLUTION
<input checked="" type="checkbox"/>	MOTION
<input type="checkbox"/>	DIRECTION
<input type="checkbox"/>	INFORMATION

PROJECT NAME: Text Amendment to the Community Development Code #TXT-09-06

PETITION: Text Amendments to the Community Development Code to permit medical marijuana uses as a Conditional Use or Use with Criteria in commercial and industrial zone districts.

APPLICANT: City of Steamboat Springs, Department of Planning Services, c/o City Planner Bob Keenan, Centennial Hall, 124 10th Street, PO Box 775088, Steamboat Springs, CO 80477 970-879-2060

PLANNING COMMISSION COMMUNICATION FORM

Text Amendment to the Community Development Code #TXT-09-06

September 24, 2009

I. RECOMMENDED MOTION

Staff recommends the Planning Commission approve the attached draft ordinance amending the Community Development Code provide a definition of medical marijuana dispensaries and to allow the use of medical marijuana dispensaries as a Conditional Use and Use with Criteria in commercial and industrial zone.

II. BACKGROUND INFORMATION

Article XVIII, Section 14 of the Colorado Constitution, adopted by the voters in 2000, permits the medical use of marijuana by persons in Colorado suffering from debilitating medical conditions. A number of communities, including Steamboat Springs, have received requests from persons wishing to operate medical marijuana dispensaries for the purpose of providing medical marijuana to patients pursuant to Article XVIII, Section 14.

Two medical marijuana dispensaries are now operating in Steamboat Springs. The City currently has no regulations governing locations, business hours, or any other aspect of medical marijuana dispensary operations.

The City Council on August 18, 2009 adopted a moratorium prohibiting additional medical marijuana dispensaries from operating pending adoption of regulations regarding this land use. Staff has prepared draft ordinance language to amend the Community Development Code to regulate medical marijuana dispensary operations. The ordinance language is attached.

Most or all of the provisions of the draft ordinance language are taken from draft ordinances from other communities and/or from operational guidelines provided the City by the operators of one of the existing dispensaries.

City Council provided feedback to staff on a draft ordinance presented to them on September 16, 2009. The proposed ordinance reflects the suggested changes by City Council.

III. DESCRIPTION

Code Change #1: Newly created definition of medical marijuana dispensary.

Medical Marijuana Dispensary means any use of any property, structure, or vehicle to dispense marijuana in any form and in any manner to patients or primary care givers in accordance with Article XVIII, Section 14 of the Colorado Constitution and with any statute or administrative regulations implementing Article XVIII, Section 14.

(1) Use criteria:

- (a) Medical marijuana dispensaries shall not be located within 500 feet of any public or parochial school or the principal campus of any college, university, or seminary.

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Distances described in this paragraph shall be calculated by measuring the distance from the nearest property line of the school to the building in which the medical marijuana dispensary is located.

- (b) Medical marijuana dispensaries shall operate from a permanent and fixed location. No medical marijuana dispensary shall operate from a vehicle or other moveable location. Nor shall any medical marijuana dispensary provide delivery services except that deliveries may be made to patients whose medical condition precludes their travel to the medical marijuana dispensary.
- (c) Medical marijuana dispensaries shall have staff members present during hours of operation. No vending machines, drive up windows, or unsupervised transactions shall be permitted.
- (d) Medical marijuana dispensaries shall provide clients contact information for local drug abuse treatment centers as well as educational materials regarding the hazards of substance abuse.
- (e) Medical marijuana dispensaries shall operate only during the hours of 7:00 a.m. to 7:00 p.m.
- (f) Medical marijuana dispensaries shall provide adequate security on the dispensary premises, which shall include the following:
 - i) Twenty-four hour security surveillance cameras to facilitate the investigation of crimes and to include video and audio capabilities, with a redundant power supply and circuitry to monitor entrances/exits and parking lot along with the interior and exterior of the premises. Fifteen days of security video and audio shall be preserved for 30 days and readily available to the Police Department during normal business hours. The resolution of these color cameras will be of sufficient quality to allow for the identification of the subject's facial features, in all lighting conditions, in the event of a crime.
 - ii) A burglar alarm system that is professionally monitored and maintained in good working order;
 - iii) A locking safe permanently affixed to the premises suitable for storage of the dispensaries' inventory and cash; all to be stored during non-business hours; live plants being cultivated shall not be deemed inventory requiring storage in a locked safe.
 - iv) Exterior lighting that illuminates the exterior walls of the dispensary and that complies with the lighting code set forth in this Community Development Code.
- (g) No firearms, knives, or other weapons shall be permitted in a marijuana dispensary except those carried by sworn peace officers.
- (h) Medical marijuana dispensaries shall operate on an appointment only basis.
- (i) Medical marijuana dispensaries shall not display signs or otherwise advertise the presence of marijuana on the premises. This restriction shall include, but shall not be limited to, the use of signage or advertising using the word "marijuana" or any synonym or slang term for marijuana, or depictions of any portion of the marijuana plant.
- (j) Marijuana shall not be consumed or used on the premises of a medical marijuana dispensary. In the case of a medical marijuana dispensary located in a structure with a

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legal secondary unit or other legal dwelling unit, the dwelling unit shall not be considered part of the medical marijuana dispensary premises if access to the dwelling unit is prohibited to the medical marijuana dispensary patients.

- (k) Medical marijuana dispensaries shall comply with the provisions of Article XVIII, Section 14 of the Colorado Constitution and with any other relevant Colorado statute or administrative regulation. The operator of a medical marijuana dispensary shall provide evidence of said compliance and shall permit the inspection of the premises upon request of any sworn peace officer in the employ of the City of Steamboat Springs Department of Public Safety. Evidence of compliance shall include an accounting of the quantity of marijuana on the premises at any given time along with written evidence of the operator’s status as a patient or primary care giver sufficient to establish the medical use of the marijuana.
- (l) Medical marijuana dispensaries shall not be located on pedestrian levels of structures in the CY and CO zone districts.
- (m) Medical marijuana dispensaries shall sell or distribute only marijuana lawfully grown in compliance with Article XVIII, Section 14 of the Colorado Constitution and with any other relevant Colorado statute or administrative regulation.

(2) Medical marijuana dispensaries shall not be permitted to operate as “home occupations.”

a. Code Change #2

Sec. 26-92 Use Classifications

Table 26-92
Table of Permitted Principal Uses

Use Classification and Specific Principal Uses	Zoning Districts															
	OR	RE	RN	RO	RR	MH	MF	G-1	G-2	CO	CY	CN	CC	CS	I	
COMMERCIAL USES																
Medical Marijuana Dispensary											CR	CR	C	CR	CR	CR

IV. PRINCIPAL DISCUSSION ITEMS:

The principal discussion item pertains to the proposed use criteria and the location of the proposed use.

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V. LIST OF ATTACHMENTS

Attachment A – Draft Ordinance

ORDINANCE

AN ORDINANCE AMENDING THE COMMUNITY DEVELOPMENT CODE BY ADDING A DEFINITION AND USE CRITERIA FOR MEDICAL MARIJUANA DISPENSARY USES; AMENDING THE USE TABLE TO PERMIT MEDICAL MARIJUANA USES AS A CONDITIONAL USE OR USE WITH CRITERIA IN COMMERCIAL AND INDUSTRIAL ZONE DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; REPEALING ALL CONFLICTING ORDINANCES; AND SETTING A HEARING DATE

WHEREAS, Article XVIII, Section 14 of the Colorado Constitution creates an affirmative defense for the medical use of marijuana to state criminal statutes prohibiting the cultivation, possession, and use of marijuana; and

WHEREAS, the passage of Article XVIII, Section 14 has led to the creation of businesses described as medical marijuana dispensaries, which seek to distribute marijuana for medical use to persons registered as patients pursuant to Article XVIII, Section 14; and

WHEREAS, the City Council finds that the operations of medical marijuana dispensaries in Colorado and in other states that permit the medical use of marijuana have in some cases had adverse impacts on their communities’ character, increased the supply of recreational as opposed to medicinal marijuana, and generated increased crime rates, including armed robberies of dispensaries and their patients; and

WHEREAS, the City Council finds that it is necessary to the public health, safety, and welfare that the Community Development Code be adopted to regulate the location and operation of medical marijuana dispensaries in Steamboat Springs.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS THAT:

SECTION 1. Section 26-92 of the Steamboat Springs Community Development Code shall be amended to read as follows:

	Zoning Districts														
Use Classification and Specific Principal Uses	OR	RE	RN	RO	RR	MH	MF	G-1	G-2	CO	CY	CN	CC	CS	I
COMMERCIAL USES															
Medical Marijuana Dispensary										CR	CR	C	CR	CR	CR

SECTION 2. Section 26-402 of the Steamboat Springs Community Development Code shall be amended by the addition of the following definitions and use criteria:

Medical Marijuana Dispensary means any use of any property, structure, or vehicle to dispense marijuana in any form and in any manner to patients or primary care givers in accordance with Article XVIII, Section 14 of the Colorado Constitution and with any statute or administrative regulations implementing Article XVIII, Section 14.

(1) Use criteria:

- (a) Medical marijuana dispensaries shall not be located within 500 feet of any public or parochial school or the principal campus of any college, university, or seminary. Distances described in this paragraph shall be calculated by measuring the distance from the nearest property line of the school to the building in which the medical marijuana dispensary is located.
- (b) Medical marijuana dispensaries shall operate from a permanent and fixed location. No medical marijuana dispensary shall operate from a vehicle or other moveable location. Nor shall any medical marijuana dispensary provide delivery services except that deliveries may be made to patients whose medical condition precludes their travel to the medical marijuana dispensary.
- (c) Medical marijuana dispensaries shall have staff members present during hours of operation. No vending machines, drive up windows, or unsupervised transactions shall be permitted.
- (d) Medical marijuana dispensaries shall provide clients contact information for local drug abuse treatment centers as well as educational materials regarding the hazards of substance abuse.
- (e) Medical marijuana dispensaries shall operate only during the hours of 7:00 a.m. to 7:00 p.m.
- (f) Medical marijuana dispensaries shall provide adequate security on the dispensary premises, which shall include the following:
 - i) Twenty-four hour security surveillance cameras to facilitate the investigation of crimes and to include video and audio capabilities, with a redundant power supply and circuitry to monitor entrances/exits and parking lot along with the interior and exterior of the premises. Fifteen days of security video and audio shall be preserved for 30 days and readily available to the Police Department during normal business hours. The resolution of these color cameras will be of sufficient quality to allow for the identification of the subject's facial features, in all lighting conditions, in the event of a crime.
 - ii) A burglar alarm system that is professionally monitored and maintained in good working order;
 - iii) A locking safe permanently affixed to the premises suitable for storage of the dispensaries' inventory and cash; all to be stored during non-business hours; live plants being cultivated shall not be deemed inventory requiring storage in a locked safe.

- iv) Exterior lighting that illuminates the exterior walls of the dispensary and that complies with the lighting code set forth in this Community Development Code.
- (g) No firearms, knives, or other weapons shall be permitted in a marijuana dispensary except those carried by sworn peace officers.
- (h) Medical marijuana dispensaries shall operate on an appointment only basis.
- (i) Medical marijuana dispensaries shall not display signs or otherwise advertise the presence of marijuana on the premises. This restriction shall include, but shall not be limited to, the use of signage or advertising using the word “marijuana” or depictions of any portion of the marijuana plant.
- (j) Marijuana shall not be consumed or used on the premises of a medical marijuana dispensary. In the case of a medical marijuana dispensary located in a structure with a legal secondary unit or other legal dwelling unit, the dwelling unit shall not be considered part of the medical marijuana dispensary premises if access to the dwelling unit is prohibited to the medical marijuana dispensary patients.
- (k) Medical marijuana dispensaries shall comply with the provisions of Article XVIII, Section 14 of the Colorado Constitution and with any other relevant Colorado statute or administrative regulation. The operator of a medical marijuana dispensary shall provide evidence of said compliance and shall permit the inspection of the premises upon request of any sworn peace officer in the employ of the City of Steamboat Springs Department of Public Safety. Evidence of compliance shall include an accounting of the quantity of marijuana on the premises at any given time along with written evidence of the operator’s status as a patient or primary care giver sufficient to establish the medical use of the marijuana.
- (l) Medical marijuana dispensaries shall not be located on pedestrian levels of structures in the CY and CO zone districts.
- (m) Medical marijuana dispensaries shall sell or distribute only marijuana lawfully grown in compliance with Article XVIII, Section 14 of the Colorado Constitution and with any other relevant Colorado statute or administrative regulation.

(2) Medical marijuana dispensaries shall not be permitted to operate as “home occupations.”

SECTION 3

All ordinances heretofore passed and adopted by the City Council of the City of Steamboat Springs, Colorado, are hereby repealed to the extent that said ordinances, or parts, thereof, are in conflict herewith.

SECTION 4

If any section, subsection, clause, phrase or provision of this Ordinance is, or the application thereof to any person or circumstance, shall to any extent, be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections,

clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and shall in no way be affected, impaired or invalidated.

SECTION 5

The City Council hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public peace, health and safety.

SECTION 6

This Ordinance shall take effect immediately upon the expiration of five (5) days from and after its publication following final passage, as provided in Section 7.6 (h) of the Steamboat Springs Home Rule Charter.

SECTION 7

A public hearing on this ordinance shall be held on October 20, 2009, at 5:00 P.M. in the Citizens Hall meeting room, Centennial Hall, Steamboat Springs, Colorado.

INTRODUCED, READ, AND ORDERED PUBLISHED, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the _____ day of _____, 2009.

**Paul Antonucci, President
Steamboat Springs City Council**

ATTEST:

Julie Franklin, City Clerk

FINALLY READ, PASSED AND APPROVED this _____ day of _____, 2009.

**Paul Antonucci, President
Steamboat Springs City Council**

ATTEST:

Julie Franklin, City Clerk