

Staff Report

TO: City of Lakewood Planning Commission

THRU: Jay N. Hutchison, Director
Department of Planning and Public Works

FROM: Tim Gelston, Development Review Manager

REPORT DATE: December 30, 2009

HEARING DATE: January 6, 2010

SUBJECT: Draft Medical Marijuana Ordinance

RECOMMENDATION

Planning Commission is asked to recommend to City Council amendments to the Lakewood Zoning Ordinance addressing medical marijuana Care-giver Facilities. The attached draft ordinance is the draft presented to the City Council and Planning Commission at the joint study session of December 7, 2009 with limited additions that are highlighted by underlining and described within this staff report. The draft ordinance would amend the Zoning Ordinance to do the following:

1. Define three new terms for purposes of the Zoning Ordinance: Care-giver Facilities, Patient and Primary Care-giver;
2. Identify the existing zone districts in which Care-giver Facilities would be added as a permitted use;
3. Prohibit Care-giver Facilities as a home occupation; and
4. Establish the parking ratio for Care-giver Facilities located at newly constructed sites.

In addition to amending the Zoning Ordinance, the proposed ordinance would create a City licensing system for persons wishing to operate a Care-giver Facility. The licensing portion of the ordinance is generally beyond the scope of the Planning Commission's role of advising the

Council on land use matters. The Planning Commission is therefore being asked to make a recommendation to the City Council only on Sections 2-15 concerning zoning. Nevertheless, there are some elements of the licensing portion of the proposed ordinance that may be relevant to the Commission's deliberations. Those elements are discussed later in this memorandum.

The Planning Commission resolution attached to this memorandum is drafted to convey a Planning Commission recommendation of approval to the City Council.

BACKGROUND

Amendment 20 to the Colorado Constitution was approved by Colorado voters in November 2000 and provides an affirmative defense against allegations of violating state criminal laws related to marijuana, if the marijuana was used to alleviate certain debilitating medical conditions, and if the marijuana was being used or possessed by either a state-registered patient or by a primary care-giver. The adoption of Amendment 20 did not eliminate the federal laws prohibiting possession and use of marijuana. Consequently, despite Amendment 20's protection from state prosecution, the medical marijuana industry remained small in Colorado until recently, presumably because of the threat of federal prosecution.

Two announcements by the U.S. Attorney General's Office in 2009 led to a changing environment for medical marijuana use in Colorado. First, the Attorney General's Office announced that it would no longer conduct raids of medical marijuana facilities in states with laws like Colorado's. Second, federal prosecutors were directed not to prosecute individuals whose actions may violate federal marijuana laws but would comply with state medical marijuana laws.

The impact in Colorado of these changes in federal policy has been a significant increase in the number of applications for registration as a medical marijuana patient and a commensurate increase in the number of requests to establish medical marijuana care-giver facilities to serve the patients. Indeed, the state issued approximately 2000 medical marijuana patient registration cards between 2000 and 2008, while today nearly 30,000 applications for medical marijuana cards have been received by the Colorado Department of Public Health and Environment.

In the past few months, the City of Lakewood has received more than 150 calls from individuals interested in opening medical marijuana care-giver facilities in the City. In addition, more than 25 applications have been submitted for City sales and use tax licenses for Care-giver Facilities. When the extent of the demand for care-giver facilities in Lakewood became apparent, the City ceased issuing sales and use tax licenses for such facilities pending the City Council's consideration of a licensing and zoning ordinance.

DRAFT ORDINANCE

The draft ordinance attached to this staff report was developed by a committee consisting of representatives from the City Manager's Office, City Clerk's Office, City Attorney's Office, Police Department, Finance Department and Planning and Public Works Department. The committee met several times during the Fall of 2009 to identify and discuss key issues, staff research and drafts of the ordinance. On December 7th, the draft ordinance was discussed during a joint study session of the Planning Commission and City Council.

The Planning Commission is now asked to review and make a recommendation to City Council on the zoning portions of the draft ordinance (i.e., Sections 2 through 15 of the draft ordinance on pages 15 through 17). The attached draft ordinance is dated December 29, 2009. The document is an edited version of the December 3 draft discussed during the joint study session. Additions are underlined and deletions are struck through. The additions and deletions are noted below.

Specifically, the amendments to the Zoning Ordinance would:

1) Add the following definitions (Draft Ordinance Section 2 on page 15):

- a) Care-giver Facilities—*Care-giver Facility means the use by a primary care-giver of any property or structure within the City to cultivate, process, prepare, distribute, transmit, give, dispense, or otherwise provide marijuana in any manner or form to patients in accordance with Section 14 of Article 18 to the Colorado Constitution (Amendment 20) and the implementing state statutes and administrative regulations.*

Note that the definition in the draft ordinance has been revised slightly from the language provided for the joint study session. The definition now includes processing and preparing medical marijuana for Patient use in the list of activities anticipated to occur at Care-giver Facilities.

- b) Patient—*Patient has the meaning provided in Section 14 of Article 18 to the Colorado Constitution (Amendment 20) and the implementing state statutes and administrative regulations.*
 - c) Primary Care-giver—*Primary Care-giver has the meaning provided in Section 14 of Article 18 to the Colorado Constitution (Amendment 20) and the implementing state statutes and administrative regulations.*
- 2) Permit Care-giver Facilities in the following zone districts (Sections 3-7, and 9-13, pages 15-17; illustrated in red on the attached map):
- a) All commercial zone districts (1-C, 2-C, 3-C, 4-C and 5-C);
 - b) The *Transit Mixed Use - Commercial* zone district (TMU-C); and
 - c) The *Colfax Mixed Use - Community Sub-District* and the *Colfax Mixed Use - Roadside Sub-District* (CMU-C and CMU-R);

Note that the attached map identifies the same parcels as the map provided at the joint study session on December 7, 2009.

Note that additional language has been added creating Sections 10 and 12 of the proposed ordinance to include parcels in the CMU-C and CMU-R sub-districts that do not front on Colfax. Those parcels have consistently been included on the map, but were inadvertently omitted from the text of the draft ordinance presented at the study session.

Note that sections 3-7 and 9-13 of the draft ordinance have been revised for clarity to include the name of the zone district specifically addressed in each section of the draft ordinance.

- 3) Allow Care-giver Facilities only in those *Planned Development (PD)* districts that specifically name Care-giver Facilities as an allowed use (Section 8, page 16).

Note that the language proposed in section 8 had created some confusion and has been changed to be clearer while remaining consistent with the study session discussion.

- 4) Establish the minimum parking standard for Care-giver Facilities of 4.0 spaces per 1,000 square feet of gross floor area (Section 14, page 17).

Note that the title of the table referred to in section 14 has been added for clarity.

- 5) Prohibit Care-giver Facilities as a Home Occupation (Section 15, page 17).

Note that language has been added to clarify that section 15 amends the Home Occupations section of the Zoning Ordinance.

As mentioned above, in addition to proposing changes to the City's Zoning Ordinance, the draft ordinance would create a licensing system for any person wishing to operate a Care-giver Facility. Although separate and distinct from the zoning portion of the proposed ordinance, some elements of the licensing portion may be relevant to the Commission's review, including those provisions that would:

- 1) Require a minimum separation of one-half mile between Care-giver Facilities;
- 2) Prohibit mobile Care-giver Facilities while allowing Primary Care-giver delivery to Patients;
- 3) Require compliance with the results of the Police Department's recommendations for a Care-giver Facility based on a site-specific Crime Prevention Through Environmental Design evaluation;
- 4) Prohibit consumption or use of marijuana at a Care-giver Facility;
- 5) Limit cultivating, processing or storing marijuana within Lakewood to Care-giver Facilities and Patients' residences;
- 6) Require the word "medical" be included on any sign that also includes the word "marijuana," "cannabis," or any similar term; and
- 7) Prohibit displaying or storing marijuana products and paraphernalia in a manner visible from a public sidewalk or right-of-way.

STAFF ANALYSIS

In creating the draft ordinance, staff considered a number of factors related to medical marijuana and how the use might impact the community. In addition, staff researched ordinances from other communities in Colorado and elsewhere, and discussed the issue with a number of land use officials locally and in California, which has a longer medical marijuana history than Colorado.

The intent of the proposed ordinance is to make marijuana reasonably available for medical purposes in Lakewood while minimizing the potentially negative impacts associated with the nature and value of the product. Summaries follow of several key considerations that arose during development of the land use components of the proposed ordinance.

Security

Several provisions of the ordinance are designed to make Care-giver Facilities as secure as possible, including implementation of Crime Prevention Through Environmental Design, requirements for background checks, secure storage and video monitoring.

Cultivation and Processing

The term "Care-giver Facility" is defined to include all activities associated with the provision of medical marijuana by a Primary Care-giver to a Patient. Included in the definition are cultivation and processing of medical marijuana. If approved as drafted, medical marijuana would only be grown in Lakewood at Care-giver Facilities and the residences of Patients. Such activities at a Patient's residence would be limited to the quantity of marijuana legally possessed by the individual Patient as determined by Amendment 20.

Allowing cultivation and processing for multiple Patients at locations other than Care-giver Facilities would create another new use (sometimes referred to as "grow operations") that could concentrate significant amounts of marijuana at specific locations and increase the amount of marijuana transportation needed. An additional licensing system would be necessary to allow inspection of grow operations to ensure they are secure, appropriately ventilated and have a safe electrical system. Moreover, increased transportation of marijuana necessitated by separating cultivation from sales will increase potential issues. Routine traffic stops will consume additional police resources, as careful evaluation would be required to distinguish medical marijuana deliveries from unlawful possession cases. And, the level of security required at Care-giver Facilities could not be provided during transportation of marijuana to Care-giver Facilities.

Nature of the Care-giver Facility Use

Because consumption would not be allowed at Care-giver Facilities, Care-giver Facilities will function most similarly to retail establishments. The zone districts proposed to allow Care-giver Facilities are those in the City that allow general retail. Lakewood mixed-use districts (Transit Mixed Use and Colfax Mixed Use) allow retail in nearly all sub-districts. The TMU-C was chosen from all of the TMU districts as being the sub-district most focused on retail use. The CMU-C and CMU-R sub-districts were selected due to their greater focus on community

retail and lesser focus on neighborhood retail. If consumption were allowed on-site it would make the use more comparable to a restaurant, bar, music venue, or other assembly facility, depending on the scale of on-site consumption allowed. The zone districts and parking ratio proposed in the draft ordinance are consistent with retail uses and not the longer-term customer occupancy associated with places of consumption.

Dispersion

One goal of the draft ordinance is ensuring that medical marijuana is available throughout the community while avoiding concentration of Care-giver Facilities and any associated negative secondary impacts. The attached map shows in red all properties located in zone districts proposed to permit Care-giver Facilities – more than 1100 parcels. The commercial nature of the Colfax corridor and the inclusion of retail uses in nearly all mixed use sub-districts create the potential that the density of Care-giver Facilities could be much higher along Colfax. However, that potential is offset by the proposed ordinance requirement that Care-giver Facilities be separated from each other by a minimum of one-half mile. Separation requirements exist for other types of uses in Lakewood including pawn shops and adult businesses.

Planned Developments

Planned Developments (PDs) are zone districts that are customized at the time the zoning is adopted. Specific customization typically includes detailed discussion of uses that are permitted or prohibited. The land use decisions of each PD are often a primary topic of deliberation by the affected property owners, neighbors, proximate neighborhood organizations, Planning Commission and City Council during the public process of adopting each PD. The PD documents are then available to prospective landowners to create a reasonable expectation of the types of uses a property purchaser or tenant could find in the area.

PDs are widely dispersed throughout Lakewood. There are residential PDs, non-residential PDs and mixed use PDs. Because of the process by which PDs are developed, the diverse nature of various PDs, and the unique nature of Care-giver Facilities, and because no existing PDs in Lakewood specifically contemplated medical marijuana facilities at the time of adoption the proposed ordinance limits Care-giver Facilities to PDs that explicitly permit the use. As there are currently no PDs that explicitly permit the use, a Care-giver Facility could be established in a PD zone only if the PD were amended to include the use through the City's rezoning process, which includes both neighborhood meetings and public hearings.

Home Occupation

In Lakewood, a variety of uses are permitted as in-home occupations. Home Occupations are defined as follows:

Home Occupation - Any occupation of a service character which is clearly secondary to the main use of the premises as a dwelling unit, and which does not change the character thereof except as provided in Section 17-13-5 of the Zoning Ordinance of the City of Lakewood.

The purpose and intent of the home occupation sections includes:

- *Maintain neighborhood integrity and preserve the residential character of neighborhoods by encouraging compatible land uses.*
- *Provide residents of the City with an option to utilize their residences as a place to enhance or fulfill personal economic goals as long as the choice of home occupation does not infringe upon the residential rights of neighborhood inhabitants.*
- *Establish criteria for operating home occupations in dwelling units within residential districts.*
- *Minimize the impact a home occupation has on a neighborhood with respect to public and private services such as street, sewer, water, and electrical systems.*

Retail activities at home occupation locations are permitted only in narrowly defined circumstances, none of which are comparable to medical marijuana Care-giver Facilities.

After considering the definition, purpose and intent of home occupations and in light of safety and security issues, staff is recommending that Care-giver Facilities be specifically prohibited as a home occupation. However, any Patient may still possess for personal use and may still use medical marijuana in the patient's home as outlined in Amendment 20 to the Colorado Constitution.

Parking

Parking demand for Care-giver Facilities is not expected to exceed normal retail parking rates. Therefore, the standard Zoning Ordinance general retail ratio of 4 parking spaces per 1000 square feet of gross floor area is recommended. Parking requirements in the TMU and CMU zone districts are somewhat different based on the specific goals and intended character of the mixed-use districts. Parking for Care-giver Facilities in the CMU and TMU zones would be the same as what is generally required of retail uses in TMU and CMU, which is a minimum of two spaces and a maximum of four spaces per 1000 s.f. of gross floor area. The City does exercise discretion when an existing building changes uses. Consequently, there may be times when the parking available at a Care-giver Facility will be less than the amount normally required.

Signage and Product Display

Amendment 20 is specifically limited to medical uses of marijuana. Consistent with the medical limitation of Amendment 20 and recognizing the otherwise illegal status of marijuana, the proposed ordinance requires the word "medical" be included on any sign that also includes the word "marijuana," "cannabis," or any similar term. The font sizes would be similar. And, the draft ordinance prohibits storing or displaying marijuana products and paraphernalia outdoors or in such a way as to be visible from a public sidewalk or right-of-way. This is consistent with the Amendment 20 requirement that medical use of marijuana not be in plain view of, or in a place open to, the general public.

SUMMARY AND RECOMMENDATION

The proposed ordinance addresses a variety of issues associated with land use and other effects of the ongoing expansion of the medical marijuana industry. The proposal balances the will of Colorado voters to allow the use of marijuana for medical purposes with the community's desire to avoid the negative secondary effects that could accompany facilities housing large quantities of a valuable and otherwise illegal product. The ordinance focuses on maximizing security and safety at Care-giver Facilities and addresses the retail components of the impacts of the use.

Staff recommends that the Planning Commission adopt a resolution recommending that City Council adopt the amendments to the Zoning Ordinance contained in Sections 2 through 15 of the attached draft ordinance related to Medical Marijuana and Care-giver Facilities.

The current schedule anticipates first reading of the proposed ordinance by City Council on January 25, 2010. First reading is for the purpose of publishing the draft ordinance and establishing the date for a public hearing. At this time, it is anticipated that City Council's second reading, public hearing and final decision could occur on February 8, 2010.

Attachments:

Draft Planning Commission Resolution

Draft Medical Marijuana Ordinance

Map illustrating properties within zone districts recommended for Care-giver Facilities