

SECTION 5-29 MEDICAL AND RETAIL MARIJUANA FACILITIES

5-2901 A. Purpose of Section

The Purpose of the Medical and Retail Marijuana Facilities Section is to set forth the general requirements, review procedures, notice provisions and review standards for locating and allowing both Medical and Retail Marijuana Establishments (Medical Marijuana Optional Premises Cultivation Operations, Medical Marijuana Infused Products Manufacturing and Retail Cultivation Facility and Retail Production Manufacturing) in unincorporated areas of San Miguel County that are eligible for licensing under the State of Colorado and San Miguel County licensing authority. The County is aware of concerns expressed by some individuals that allowing marijuana establishments may expose them to public safety risks and may also change or alter the character of their neighborhood or the community. In considering these concerns it is the County's position that the most effective way to control marijuana use in the community and to address public safety concerns is to regulate it. In addition to having stringent state and local licensing requirements for both medical and retail marijuana establishments the intent of this section is to strike a reasonable balance of allowing regulated marijuana establishments in limited locations through a thorough public review process that will not expose residents in our residential neighborhoods and in rural areas to safety risks and or dangerous situations.

The general standards are also intended to cause such establishments to be located and developed so they blend into the rural ranching and agricultural landscape, are not highly visible or have the location of these facilities readily apparent to neighboring landowners and the general public. This is proposed to be accomplished by requiring a Two-Step Special Use Permit Review process, requiring increased noticing requirements, including specific time, place and manner restrictions limiting the location, prescribing distance requirements from schools and residential areas, setting size and scale limits on the operations, prohibiting signage and potentially limiting the number of allowed marijuana establishments within the unincorporated areas of the county. Section 5-29, with the exception of Section 5-2907 Definitions, does not apply to marijuana establishments within the Illium Industrial Park where marijuana establishments are allowed by right subject to the applicable provisions in the Lawson Hill PUD Land Use Matrix and Section 5-2907 Definitions.

5-2901 B. General

Medical Marijuana Optional Premises Cultivation Operations, Medical Marijuana Infused Products Manufacturing, Medical Marijuana Centers and Retail Cultivation Facility, Retail Production Manufacturing, Retail Testing Facility and Off Premises Storage of Retail Marijuana Facility are uses allowed in the Low Intensity Industrial (I) Zone District in the Illium Valley portion of the Lawson Hill PUD by Administrative Review.

Medical Marijuana Optional Premises Cultivation Operations, Medical Marijuana Infused Products Manufacturing and Retail Cultivation Facility and Retail Production Manufacturing may be allowed subject to approval of a Two-step Special Use Permit application in the Forestry, Agriculture and Open (F) Zone District, the Wright's Mesa (WM) Zone District and the Wright's Mesa Rural Agricultural (WMRA) Zone District.

Marijuana Establishments/Facilities are not allowed within the Wright's Mesa Master Plan Norwood Future Land Use Plan area.

A Medical or Retail Marijuana establishment may not operate until it is duly licensed by the state licensing authority and approved and licensed by San Miguel County.

The County Retail and Medical Licensing Standards, which are separate documents, shall establish the number of marijuana facilities allowed in the WM and/or WMRA zone districts at any given time.

5-2902 Review Procedures

All applications for Facilities or Establishments to be located within the Forestry, Agriculture and Open (F), Wright's Mesa (WM) and Wright's Mesa Rural Agricultural (WMRA) Zone Districts are subject to a Two-step Planning Commission and Board of County Commissioner review. The process will consider the zoning, type, location, size and scale, the proximity to a Residential Area, and will be reviewed for compliance with the provisions and the standards set forth herein, as well as the standards of the applicable Zone District.

5-2903 Application Requirements

A. Pre-application Conference with Staff

Prior to the submittal of an application for a marijuana facility the applicant shall schedule a pre-application conference with the Planning Department staff. The applicant will provide information on the proposed facility, including the location. Staff may conduct a site visit to the proposed location to determine what specific issues may need to be addressed in addition to the following General Requirements.

B. General Requirements

1. The use must comply with all applicable county and state regulations.
2. Retail Marijuana Stores and Medical Marijuana Centers are prohibited within the unincorporated areas of the County, except as an Accessory Use to a permitted and licensed Retail Marijuana or Medical Cultivation

Facility or Retail or Medical Production Manufacturing Facility within the Ilium Industrial Park.

3. The use shall be located within a building or Substantial Greenhouse and shall be designed to blend into the surrounding rural landscape.
4. Storage of Equipment. All equipment must be stored inside the structure or within an enclosed fenced area.
5. Water. The applicant must demonstrate a legal and physically adequate water supply for the proposed use. Applicant must complete the State of Colorado, Office of the State Engineer Water Supply Information Summary form and submit this form with the application for a Special Use Permit. This completed form will be referred by staff to the Office of the State Engineer, Division of Water Resources for review and comment.
6. The following must be addressed as part of any application:
 - a. Site Plan: The site plan shall show the location of the building containing the licensed premises and provide distances from the building to adjacent buildings, describe all existing uses within the building and all adjacent buildings, parking spaces, property lines, and physical land features, such as streams, driveways, and roadways.
 - b. Location Plan. The location plan shall show all uses located within one-half (1/2) mile of the property boundary line of the premises on which the Retail or Medical Marijuana Establishment is located, including, but not limited to: any public or private preschool or elementary, middle, junior high, or high school; the campus of any college, university, seminary, or residential child care facility; or a drug or alcohol rehabilitation center. The distance measurement shall be a direct line between the closest point of the premises' boundary and the closest point on the neighboring lot or parcel containing the specified use.
 - c. Building Plan. The plans for the interior of the Marijuana Establishment shall include a detailed floor plan layout and information needed to demonstrate compliance with the Local Licensing standards and the applicable requirements of the County's adopted Building Code(s).
 - d. Location of existing residential structures within 1/2 mile.
 - e. Number of proposed employees, both permanent and temporary.
 - f. A waste disposal plan.
 - g. A noxious weed control plan.
 - h. An odor abatement plan designed to keep all odors from the proposed use from emanating beyond the subject property lines to prevent impacts on adjacent properties.

C. Scenic Quality Mitigation Plan

1. A plan for mitigation of visual impacts or other appropriate aesthetic impacts of the proposed access, structure(s), fencing, landscaping, and

ancillary site improvements and use to achieve the goal set forth in Section 5-2301 A. Purpose.

2. Visual mitigation techniques such as coloring, screening and landscaping. Use of natural colors and native vegetation is encouraged.
3. Provide a lighting plan. All exterior lighting shall be either directed toward the ground or the surface of a building. Lighting shall be shielded to prevent direct visibility of light bulbs from off-site. Motion detector security lighting may be approved if the lights are fully shielded and down lighted. High intensity sodium vapor and similar lighting is prohibited.
4. Signs. No advertising or identification sign is permitted anywhere upon or attached to the facility or property.
5. The level of mitigation required will depend on the location of the proposed facility in relation to topographic features, important visual features, proximity to residential neighborhoods and other sensitive visual areas. Placement of structures in treed or screened areas rather than open meadow areas.

D. Area and Bulk Requirements

1. Minimum Lot Area: 5 Acres.
2. Maximum Size for Proposed Building or Greenhouse: 3,000 square feet. The maximum square footage includes all marijuana uses whether a single use or combined uses. Parcels 35-acres or larger may be allowed up to three separate 3,000 square foot structures depending upon the parcel size and the applicants ability to comply with all applicable standards.
3. Setbacks:
 - a. A minimum setback for a marijuana facility is 50 feet from all property lines regardless of zone district.
 - b. In addition the following setbacks shall also apply:
 - (i) Any public or private preschool or elementary, middle, junior high, or high school; the campus of any college, university, seminary, or licensed residential child care facility; or a drug or alcohol rehabilitation center must be located a minimum of one-half (½) mile from the nearest property line of the parcel. The distance measurement shall be a direct line between the closest point of the structure and the closest point on the neighboring lot or parcel upon which any of the above uses are located.
 - (ii) Setbacks from a private camp or recreational facility frequented by minors: a minimum of 1,000 feet from the nearest property line of the land. The distance measurement shall be a direct line between the closest point of the structure and the closest point on the neighboring lot or parcel upon which any of the above uses are located.

(iii) Setbacks from Residential Areas: New facilities may not be located within one-half (1/2) mile of a Residential Area.

c. Setbacks may be increased or decreased during the review and evaluation of the Special Use Permit.

5-2904 Noticing Requirements

Two-step reviews require that the notice to adjacent and affected property owners include the date, location and contact information for the time of the public meeting. The notice shall also include a provision that encourages the adjacent and affected property owners to provide written comments no later than one-week prior to the meeting date in order to be included in the meeting packets, although comments will be accepted up to the public meeting date.

The following noticing procedures shall apply:

1. The owners, as recorded in the records of the county, of any land adjacent to or located within one-half (1/2) mile of any portion of the boundary of the parcel or tract containing the subject site and owners of each parcel of real property adjacent to or through which the designated Access Road extends from the nearest public road. Such notice shall be sent by the applicant or Planning Department at the applicant's expense at least 20 days prior to the scheduled meeting date. Email notice to adjacent and affected property owners is encouraged if Email addresses are available from the County Assessor's Office. Persons notified and the distance of notice may be increased at the discretion of the County based upon size and scale of the proposed Facility, surrounding land use pattern and perceived impacts.

In addition to the required written notice under this provision, the applicant shall make a good faith effort (at a minimum contacting the County Planning Department and checking the records of the County Clerk and Records Office) to ascertain if any of the landowners required to be provided written notice, as part of an application, are also members of a condominium association or homeowner's association. If the result of the good faith examination identifies the existence of such condominium association or homeowner's association, the applicant shall provide written notice to these associations in the same manner as other landowners. Email notice to these associations is encouraged if Email addresses are available from the County.

2. The public notice shall include the following:
 - (a) A description of the location of the facility (including a legal and practical locational description and a vicinity map), a general site plan, a vicinity map which includes the designated Access Road to the facility, and the proposed activity under review.

- (b) Time and place of the public meeting.
 - (c) The name and address of the applicant and/or its designated agent, and a statement that additional information may be obtained from the Planning Department.
3. Posting of notice shall be made by the applicant by posting a sign (to be obtained from the County) in a conspicuous place on the property or closest public roadway at least 20 days prior to the scheduled meeting date.
 4. The applicant shall present proof of such notice by submitting a copy of the letter and a list of the landowners notified, together with an affidavit attesting to the mailing of such notice executed by the person responsible for providing such written notice, to the Planning Department.

5-2905 Commencement, Duration and Modification of Special Use Permit

The Special Use Permit shall become effective on the date of written approval by the County.

Special Use Permits are issued to the applicant and do not run with the land.

If an applicant desires to modify the subject Facility by changes to equipment, site layout, approved operating plan, etc. an amendment to the original application shall be submitted for review and approval. The Planning Department shall determine whether the modification has substantial impacts or is considered a minor amendment pursuant to County adopted standards for Medical and Retail Marijuana uses.

Special Use Permit approval shall only be valid as long as the applicant holds a current State and County License for the approved use.

5-2906 Disposal of Marijuana

Marijuana waste shall be stored, secured, and managed in accordance with applicable state laws, including but not limited to rules promulgated by the Colorado Medical Marijuana Enforcement Division and the Colorado Department of Revenue-Marijuana Enforcement Division (DOR-MED) in effect and as amended from time to time hereinafter.

5-2907 Definitions

Local Licensing Standards

Means Local Licensing Standards as adopted and amended by the Board of County Commissioners.

Medical Marijuana

Means marijuana that is grown and sold pursuant to the Medical Code and includes seeds and Immature Plants.

Medical Marijuana Business

Means a medical Marijuana Center, a Medical Marijuana Infused Product Manufacturer, or an Optional Premises Cultivation Operation

Medical Marijuana Center

Means a Person licensed pursuant to the Medical Code to operate a business as described in Section 12-43.3-402 C.R.S., and sells medical marijuana to registered patients or primary caregivers as defined in Article XVIII, Section 14 of the Colorado Constitution, but is not a primary caregiver.

Medical Marijuana Infused Product

Means a product infused with Medical Marijuana that is intended for use or consumption other than by smoking, including but not limited to edible product, ointments, and tinctures. Such products shall not be considered a food or drug for purposes of the “Colorado Food and Drug Act,” part 4 of Article 5 of Title 25, C.R.S.

Medical Marijuana Infused Product Manufacturer

Means a Person licensed pursuant to the Medical Code to operate a business as described in Section 12-43.3-404, C.R.S.

Optional Premises cultivation Operation

Means a Person licensed pursuant to the Medical Code to operate a business as described in Section 12-43.3-403, C.R.S.

Residential Area

Means an area as depicted on the maps attached as Exhibit I to this Section. These mapped areas may be amended as necessary by the County. New marijuana facilities may not be located within one-half (½) mile of a Residential Area. A Residential Area may be zoned something other than WM, WMRA and F.

Retail Marijuana

Means 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 that is cultivated, manufactured, distributed, or sold by a licensed Retail Marijuana Establishment. “Retail Marijuana” does not include industrial hemp, nor does it include fiber produced from

stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Retail Marijuana Cultivation Facility

Means an entity licensed to cultivate, prepare, and package Retail Marijuana and sell Retail Marijuana to Retail Marijuana Establishments, but not to consumers.

Retail Marijuana Establishment

Means a Retail Marijuana Store, a Retail Marijuana Cultivation Facility, a Retail Marijuana Products Manufacturing Facility, or a Retail Marijuana Testing Facility.

Retail Marijuana Product

Means a product that is comprised of Retail Marijuana and other ingredients and is intended for use or consumption, such as, but not limited to, edible product, ointments and tinctures.

Retail Marijuana Products Manufacturing Facility

Means an entity licensed to purchase Retail Marijuana, manufacture, prepare, and package Retail Marijuana Product, and sell Retail Marijuana and Retail Marijuana Product to other Retail Marijuana Products Manufacturing Facilities and to Retail Marijuana Stores, but not to consumers.

Retail Marijuana Store

Means an entity licensed to purchase Retail Marijuana from a Retail Marijuana Cultivation Facility and to purchase Retail Marijuana Product from a Retail Marijuana Products Manufacturing Facility and to sell Retail Marijuana and Retail Marijuana Product to consumers.

Retail Marijuana Testing Facility

Means a public or private laboratory licensed and certified, or approved by the Division, to conduct research and analyze Retail Marijuana, Retail Marijuana Products and Retail Marijuana Concentrate for contaminants and potency.

Substantial Greenhouse

A solid, secured structure constructed to the design requirements for imposed loads (e.g., wind, snow, seismic activity) as required by the International Building Code. The exterior wall and roof coverings must be materials such as concrete, glass, metal, wood, polycarbonates or any such material that is tested and approved for such use. A hoop house, high tunnel or other similar structure that is covered or uses a membrane or a soft pliable sheet, i.e. plastic sheeting, visqueen, tarps, canvas, polyethylene films or similar materials is NOT a Substantial Greenhouse for this definition.

EXHIBIT 1

Residential Areas and Residential Area Buffer Zones

