

MEMORANDUM

TO: Ouray City Council
Patrick Rondinelli
Leo Rasmusson
Staff

FROM: David L. Masters
Kathryn M. Sellars

DATE: March 8, 2010

RE: Medical Marijuana - Updated Topic C

I. Location

- A. Enclosed with this memo are two sample maps to illustrate where MMJ dispensaries could be located in the City with the following limitations:
1. 1000 ft. from any school or recreation center
 2. Only in C-1 and C-2 districts
 3. 100 ft. from the boundary of any residential area.

II. Growing on Premises

- A. Growing on Premises - Secondary Market/Wholesale Growers.

Besides limiting growing to premises the City may consider another conditions prohibiting a license from obtaining medical marijuana from a third party.

- B. Limit Grow Areas in Building

This issue speaks to the larger question of building regulations as they relate to dispensaries.

1. Part of the application process for a dispensary license could be a requirement that the applicant submit building plans that contained a detailed description and drawings of growing areas, storage and nonpublic/public areas.

2. One caution about limiting the area of the premises that a licensee can grow is that it is cannot effectively limit the amount of patients a care giver has.
 - a. For example, if a licensee can only grow in the basement of the building and the licensee become a care giver to enough patients he needs more room to grow, the City should not completely prevent him from expanding if necessary.
 - b. This does not mean that the City could not restrict growing to certain areas within in a building only that it should institute a procedure for the licensee to request an expansion of that area.

III. Signage

A. Symbols

Symbols can be prohibited if the City chooses.

IV. Security

A. Cameras

1. City could impose requirements for keeping of surveillance tapes of a certain amount of time.
2. Part of inspection capabilities of licensing authorities can be to review these security tapes if there is reason to believe that there is either a violation of the dispensary license or a crime has been committed.

V. Health and Quality Safety Issues

These issues are undoubtedly important. But it may be more appropriate to put the onus on the licensees to show their compliance with public health and safety standards rather than impose these obligations on the City.

A. Preventing edibles in dispensary

1. Usable form of marijuana means the seeds, leaves, buds and flowers of the plant...any mixture or preparation thereof, which are appropriate for medical use as provided but excludes the plant's stalks, stems and roots. Definition from Amendment 20.

- a. A patient medical marijuana use is limited to no more than 2 oz of a **usable form of marijuana**. (Amendment 20).
 - b. The affirmative defense is only available if patient and their primary care giver are collectively in possession of the proper amounts of medical marijuana, including the 2 oz. of medical marijuana in usable form.
2. It is risky to limit a dispensary (care giver) from having edible forms of medical marijuana because the amendment grants the right to patients and to care givers to be in possession of edible forms of medical marijuana.
3. Possible Limitations:
- a. No preparation of non-medical food products in dispensary.
 - b. Requirement of dispensary license application that the applicant demonstrate that he/she has complied with the requirement that retail food establishments to apply and obtain a license through Colorado Department of Public Health.
- (1) **“Retail Food Establishment”** means a retail operation that stores, prepares, or packages food for human consumption or serves or otherwise provides food for human consumption to consumers directly or indirectly through a delivery service, whether such food is consumed on or off the premises or whether there is a charge for such food.

“Retail Food Establishment” does not include:

Any private home; Private boarding houses; Hospital and health facility patient feeding operations licensed by the Department; Child care centers and other child care facilities licensed by the Department of human services; Hunting camps and other outdoor recreation locations where food is prepared in the field rather than at a fixed base of operation; Food or beverage wholesale manufacturing, processing, or packaging plants, or portions thereof, that are subject to regulatory controls under state or federal laws or regulations; Motor vehicles used only for the transport of food; Establishments preparing and serving only hot coffee, hot tea, instant hot beverages, and nonpotentially hazardous doughnuts or pastries

obtained from sources complying with all laws related to food and food labeling; Establishments that handle only nonpotentially hazardous prepackaged food and operations serving only commercially prepared, prepackaged foods requiring no preparation other than the heating of food within its original container or package; Farmers markets and roadside markets that offer only uncut fresh fruit and vegetables for sale; Automated food merchandising enterprises that supply only prepackaged nonpotentially hazardous food or drink or food or drink in bottles, cans, or cartons only, and operations that dispense only chewing gum or salted nuts in their natural protective covering; The donation, preparation, sale, or service of food by a nonprofit or charitable organization in conjunction with an event or celebration if such donation, preparation, sale, or service of food;

1. Does not exceed the duration of the event or celebration or a maximum of fifty-two days within a calendar year; and
2. Takes place in the county in which such nonprofit or charitable organization resides or is principally located.

- c. As a additional condition of dispensary license, the licensee would have to maintain the retail food establishment license in good standing throughout the period of the dispensary license.

B. Waste Disposal

1. Possible solution: Applicant must provide a plan for waste disposal at the time of application. A satisfactory plan will be a condition of approval of the dispensary license. This issue goes beyond old food products or non useable portions of the plants. Plants produce more medical marijuana then the amounts allowed per patient.
 - a. Example: Dispensary owner has three patients, so he allowed to have 6 oz in useable form, 9 mature plants, and 9 immature plants. The problem is when he begins to harvest the mature plants he will end up with more than 6 oz of useable medical marijuana and will need to dispose of excess.

