



STAFF REPORT

Planning Commission

Ordinance #1948

PC Date:	March 5, 2013	Case Planner:	Steve Timms
CC Date:	March 18, 2013		
Location:	City-Wide		
Applicant:	The City of Commerce City		
Address:	7887 E. 60 th Avenue, Commerce City, CO 80022		

Case Summary

Request:	An update to the Land Development Code (LDC) in relation to trails and medical marijuana business locations.
Project Description:	In July 2012, City Council passed Ordinance #1897, which regulated medical marijuana businesses within Commerce City. Since that time, the City has received an application for a Conditional Use Permit for a medical marijuana facility along Colorado Boulevard, which was subsequently denied by staff due to its proximity to the Sand Creek Trail (under the current definition and locational requirements for parks). The applicant appealed this denial; however, the denial was sustained by both Planning Commission and City Council based on the current language in the LDC as it relates to parks. At the City Council hearing in December, City Council directed staff to explore updated language that would separate trails from the traditional definition of parks.
Staff Recommendation:	Approval

Background and History

The MMD ordinance became effective in July 2012 (Ordinance #1897). As a part of this ordinance, a Conditional Use Permit is required within all industrial zone districts (I-1, I-1S, I-2, and I-3). Conditional Use Permits require two public hearings (one with Planning Commission and one with City Council). These updates do not change these requirements.

Since the adoption of this ordinance, the City has received an application for an MMD business along Colorado Boulevard, which was subsequently denied by staff due to its proximity to the Sand Creek Trail. The applicant appealed this denial, but the denial was sustained by both Planning Commission and City Council based on the current language in the LDC as it relates to parks. At the City Council hearing in December, City Council directed staff to update language that would separate trails from the traditional definition of parks. City staff updated this section and presented this information to City Council on February 11, 2013, at which time, staff was given the direction to proceed.

Request and Analysis

As referenced above, staff brought this particular LDC section to City Council at a study session on February 11, 2013. The existing and proposed Section 21-5249 and is found below.

Existing Language (not updated)

Sec. 21-5249. Medical Marijuana Business and Primary Caregivers

- (1) **Location.** No medical marijuana business or primary caregiver shall be located within 1,000 feet of the following:
 - (a) The exterior boundary of any public zone district;
 - (b) The exterior boundary of any residential zone district;
 - (c) The exterior boundary of any existing or occupied mobile home;
 - (d) The exterior boundary of any lot on which there is located a single-family or multi-family residence, whether located within or outside of the city;
 - (e) Any church or religious institution;
 - (f) Any educational institution or school, either public or private;
 - (g) Any licensed child care facility;
 - (h) Any alcohol or drug rehabilitation facility;
 - (i) Any group home for the developmentally disabled;
 - (j) Any public community center, park, fairground, or recreation center, or any publicly owned or maintained building open for use to the general public;
 - (k) Any other medical marijuana business whether such business is located within or outside of the city; or
 - (l) Any halfway house or correctional facility.

- (2) **Indoor Use.** All business related to, or consumption of, medical marijuana shall be conducted indoors, and all building openings, entries, and windows shall be located, covered, or screened in such a manner as to prevent a view into the interior; and for new construction, the building shall be constructed so as to prevent any possibility of viewing the interior from the exterior of such structure.

Proposed Language (with Updates)

Sec. 21-5249. Medical Marijuana Businesses and Primary Caregivers.

- (1) **Location.** No medical marijuana business or primary caregiver shall be located within 1,000 feet of the following:
 - (a) Any residential zone district;
 - (b) Any existing or occupied mobile home;
 - (c) Any lot on which there is located a single family or multifamily residence, whether located within or outside of the city;
 - (d) Any church or religious institution;
 - (e) Any educational institution or school, either public or private;
 - (f) Any licensed child care facility;
 - (g) Any alcohol or drug rehabilitation facility;
 - (h) Any group home for the developmentally disabled;
 - (i) Any other medical marijuana business whether such business is located within or outside of the city;
 - (j) Any halfway house or correctional facility; or
 - (k) Any fire station, community center, fairground, recreation center, other publicly owned building open for use to the general public, and any public or private park; provided, however, that for purposes of this section, the term park shall exclude any trail.

- (2) **Indoor Use.** All business related to, or consumption of, medical marijuana shall be conducted indoors, and all building openings, entries, and windows shall be located, covered, or screened in such a manner as to prevent a view into the interior; and for new construction, the building shall be constructed so as to prevent any possibility of viewing the interior from the exterior of such structure.

SECTION 2. Section 21-11200 of the Land Development Code of the City of Commerce City is hereby amended by the addition of a definition for “Parks,” which shall read as follows:

Trail shall mean a publicly or privately owned or maintained trail/path system open to the public, intended for non-motorized transportation such as walking, jogging or biking, including trailheads. Trailheads may include parking lots, drinking fountains, restrooms, picnic shelters, and related signage and monumentation.

After the direction from City Council in December 2012, planning staff, along with legal staff and parks planning staff, have met extensively to propose updated language to the LDC section dealing with medical marijuana businesses (Sec. 21-5249). The proposed updates primarily address the desire to separate trails, and in particular, the Sand Creek Trail, from a traditional city park, such as Pioneer Park or River Run Park. The updates also simplify and clarify the locational separation between uses. The proposed updates are summarized below:

1. Add a definition for the word “trail.” Previously, no definition was found for trail within the LDC, creating confusion. The proposed definition of trail also includes such items as trailheads;
2. The specific exclusion of trails from the separation requirements of parks; and
3. The removal of the phrase, “the exterior boundary of,” since this is already applicable and created confusion, as it’s not found consistently within this section.

If approved, then the Sand Creek Trail and its dedicated features and parcels, would no longer be an initial denial to a potential medical marijuana business, in which case these cases could proceed through the standard Conditional Use application process.

It is important to note that no changes are being proposed to the overall zone district allowance for medical marijuana businesses (I-1, I-2, or I-3, etc.), nor are any changes being proposed to the requirement for a Conditional Use Permit for these types of businesses. Any submitted applications for a medical marijuana business would still be required to be brought before both Planning Commission and City Council in a public hearing, and then a vote taken based on the approval criteria laid out in the Land Development Code.

Development Review Team Recommendation

Based on the information provided above, the Development Review Team recommends that the Planning Commission forward the requested amendments to the LDC to City Council with a favorable recommendation.

Recommended Motion

To recommend approval (DRT recommendation):

I move that the Planning Commission recommend that City Council approve Ordinance #1948, an ordinance amending the Commerce City Land Development Code, in relation to trails and medical marijuana business locations.

Alternative Motions

To recommend approval subject to condition(s):

I move that the Planning Commission recommend that City Council approve Ordinance #1948, an ordinance amending the Commerce City Land Development Code, in relation to trails and medical marijuana business locations, subject to the following conditions:

Insert Condition(s)

To recommend denial:

I move that the Planning Commission recommend that City Council deny Ordinance #1948, an ordinance amending the Commerce City Land Development Code, in relation to trails and medical marijuana business locations, because it fails to meet the following criteria:

List the criteria not met

I further move that, based upon this finding, the Planning Commission recommend that the City Council deny Ordinance #1948.