



STAFF REPORT

Planning Commission

Ordinance #2048	
PC Date:	April 7, 2015
Staff Contact:	Steve Timms and Karen Stevens
CC Date:	May 4, 2015
Location:	City-Wide
Applicant:	The City of Commerce City
Address:	7887 East 60 th Avenue Commerce City, CO 80022

Case Summary	
Request:	<p>The Commerce City staff is requesting several amendments to the marijuana regulations found in the Land Development Code (LDC).</p>
Project Description:	<p>The Land Development Code (LDC) was adopted by City Council in January 2009 and became effective on March 1, 2009. The adoption of the LDC was a comprehensive update to the Commerce City Zoning Ordinance, which included a wide variety of topics related to development, land use, and procedures for development. The updated version has been a tremendous help to staff and applicants as development occurs in the city.</p> <p>In late 2014, City Council asked staff to prepare land use and licensing regulations for recreational marijuana businesses. The City currently allows medical marijuana businesses, so recreational marijuana businesses would be in addition to medical marijuana. The proposed regulations highlight zone districts in which marijuana businesses should operate, separation requirements for marijuana businesses, and supplemental regulations that should apply for marijuana businesses within the city. If approved by City Council, these regulations will take effect approximately June 1, 2015.</p> <p>Since its original adoption, the LDC has been, and will continue to be, a “living document” that is amended and updated on a consistent basis, so that the information in the document remains relevant and reflective of the needs of the Commerce City community.</p>
Staff Recommendation:	Approval

Land Development Code History

Since its adoption in 2009, there have been several amendments to the LDC in an effort to maintain a “living document.” As a growing community, Commerce City’s needs are constantly evolving, so monitoring development regulations ensures that the regulations are relevant and reflect the community’s values. Therefore, future amendments and updates should be expected.

The list below highlights previous LDC Amendments.

Ordinance	Date	Request	Action
Ord. #1720	January 2009	Adoption of the Land Development Code	Approval
Ord. #1770	October 2009	Amendments to the LDC	Approval
Ord. #1785	April 2010	Amendments to the LDC	Approval
Ord. #1810	May 2010	Amendments to the LDC	Approval
Ord. #1854	March 2011	Amendments to the LDC	Approval
Ord. #1887	June 2012	Amendments to the LDC	Approval
Ord. #1891	June 2012	Amendments to the LDC	Approval
Ord. #1916	August 2012	Amendments to the LDC	Approval
Ord. #1938	December 2012	Amendments to the LDC	Approval
Ord. #1948	March 2013	Amendments to the LDC	Approval
Ord. #1956	June 2013	Amendments to the LDC	Approval
Ord. #1976	October 2013	Amendments to the LDC	Approval
Ord. #2020	December 2014	Amendments to the LDC	Approval

Ordinance #1720:

In January 2009, City Council voted unanimously to adopt the Land Development Code.

Ordinance #1770:

In October 2010, City Council unanimously approved amendments to the Land Development Code to regulate medical marijuana dispensaries.

Ordinance #1785:

In April 2010, City Council unanimously approved 24 minor amendments to the Land Development Code.

Ordinance #1810:

In May 2010, City Council unanimously approved amendments to the Land Development Code for garage requirements for non-profit agencies.

Ordinance #1854:

In March 2011, City Council unanimously approved 20 minor amendments to the Land Development Code.

Ordinance #1887:

In June 2012, City Council unanimously approved 28 minor amendments to the Land Development Code.

Ordinance #1891:

In June 2012, City Council unanimously approved amendments to the Land Development Code to regulate oil and gas operations.

Ordinance #1916:

In August 2012, City Council unanimously approved minor amendments to the Land Development Code related to alcohol establishments.

Ordinance #1938:

In December 2012, City Council unanimously approved minor amendments to the Land Development Code for Floor Area Ratio revisions.

Ordinance #1948:

In March 2013, City Council unanimously approved minor amendments to the Land Development Code related to a trail’s proximity to medical marijuana dispensaries.

Ordinance #1956:

In June 2013, City Council unanimously approved minor amendments to the Land Development Code related to the use of limited moving trucks in the C-3 zone district.

Ordinance #1976:

In October 2013, City Council unanimously approved minor amendments to the Land Development Code related to the updating of the city’s sign code.

Ordinance #2020:

In December 2014, City Council unanimously approved 26 minor amendments to the Land Development Code

Comprehensive Plan Goals

Following the City Council’s unanimous adoption of the Land Development Code (LDC) in 2009, City Council unanimously approved an updated version of the Comprehensive Plan in May of 2010. The revised Comprehensive Plan identifies provisions for regular amendments and updates to the City’s LDC. Therefore, the general concept of regular LDC amendments is supported by the Comprehensive Plan and the specific amendments are compliant with the Comprehensive Plan as identified below.

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Economic Development	ED 2a	<u>BRE Program:</u> Continue to expand the business retention and expansion programs of the city.
<u>Analysis:</u>	The proposed amendments are all more business friendly, which will help to expand new commercial and industrial businesses.	

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Economic Development	ED 4c	<u>Retail retention and expansion:</u> Develop a comprehensive retail retention and expansion program.
<u>Analysis:</u>	Adopting regulations that are more business friendly will help to retain and attract businesses.	

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Appearance and Design Standards	AD 3a	<u>LDC/Design Standards and Zoning:</u> Address code/zoning amendments to implement the Future Land Use Plan and best practices for design.
<u>Analysis:</u>	The proposed minor amendments are more business friendly, and they also insure a quality built environment.	

Background

Marijuana in Colorado:

- In 2000, Colorado voters passed Amendment 20 which created an affirmative defense to the criminal charge of marijuana possession/use for medical marijuana patients and primary caregivers.
- In 2010, the Colorado Legislature adopted the Colorado Medical Marijuana Code which:
 - Restricted the number of patients a primary caregiver could serve
 - Created a licensing scheme for medical marijuana businesses
 - Permitted local jurisdictions to prohibit medical marijuana businesses within their jurisdictions
- In 2012, Colorado voters approved Amendment 64, which:
 - Legalized for personal use/possession of up to an ounce of marijuana for anyone 21+ years.
 - Created four new marijuana businesses:
 - Retail marijuana store (sells retail marijuana to consumers)
 - Marijuana cultivation facility (grows retail marijuana)
 - Marijuana Products Manufacturing Facility (makes RMJ edibles)
 - Marijuana Testing Facility
 - Permitted local jurisdictions to opt out of the licensing scheme.
- In 2013, the Colorado Legislature adopts the Retail Marijuana Code, which establishes the State Licensing Authority, sets state fees, and outlines the state licensing procedures for RMJ businesses.

Marijuana in Commerce City:

- In 2012, the Commerce City LDC was amended to allow medical marijuana businesses and primary caregivers within the City. In addition, the city's municipal code was amended to implement a local licensing program for medical marijuana businesses.
 - The City currently allows three types of medical marijuana businesses: 1) medical marijuana center (where patients buy medical marijuana, 2) optional premises cultivation, where medical marijuana may be grown, and 3) medical marijuana infused products manufacturing, where medical marijuana edibles are made.
 - The operation of a MMJ business or operation as a primary caregiver require a conditional use permit, reviewed by Planning Commission and approved by City Council. Currently, only one application, located at approximately 56th Avenue and Colorado, has gone through this process.
 - No MMJ business or primary caregiver can locate within 1000 feet of the following:
 - Residential zone district
 - Churches, schools, child care facilities
 - Treatment centers for drugs and alcohol, group homes and halfway houses
 - Fire stations, community or recreation centers, and parks
 - Any other MMJ business
- In 2012, Amendment 64 was approved by the citizens of Commerce City 57%/43% and passed in 28 of 32 precincts.
- In 2013, City Council enacts a moratorium on RMJ businesses.
- In 2014, City Council extends moratorium for another year.
- On October 20, 2014, City Council asked staff to prepare regulations concerning recreational marijuana.
- On January 26, 2015 Staff met with City Council in a study session to discuss potential recreational marijuana issues as it relates to allowance and regulation.

- On February 23, 2015 staff met again with City Council to discuss draft regulations and receive feedback on several key issues.

Request and Analysis

Request:

The City is proposing to update the existing medical marijuana section to include recreational marijuana uses in addition to medical marijuana uses and update the associated regulations contained within.

The business use types being regulated include the following:

- (i) Retail marijuana store
- (ii) Retail marijuana cultivation facility
- (iii) Retail marijuana product manufacturing facility
- (iv) Retail marijuana testing facility
- (v) Medical marijuana centers or dispensaries
- (vi) Medical marijuana infused product manufacturers
- (vii) Medical marijuana optional premises cultivation
- (viii) Primary caregivers

In addition to the updates to the Land Development Code, there will also be updates to the City's Municipal Code, Building Code, and Fee Resolution to accommodate a robust licensing system for both recreational and medicinal marijuana uses. Please note that the planning commission has authority over the Land Development Code. The municipal code, along with the fee resolution schedule, is under City Council's authority and that draft information, where available, is provided for reference as an exhibit, but not provided for voting on approval.

Analysis:

After being directed by Council to consider options, staff began by looking at the municipalities and counties that either allow or prohibit marijuana operations. By 2015, the City and County of Denver, Adams County, Aurora, and Northglenn all allow marijuana businesses of various types. Brighton, Thornton, Arvada, and Westminster do not allow any type of marijuana businesses. Specifically, staff focused on the cities of Aurora, Boulder, and Denver for guidance with their marijuana processes and licensing regulations.

Then staff prepared a series of maps and charts which are attached as exhibits showcasing how various municipalities around the state deal with marijuana uses. The overall goals from Council were to allow these new uses, create some type of regulations that were in-line with other municipalities around the state, but not have them widespread throughout all areas of the community, with special attention towards appropriate separations from high risk uses.

The discussion at the City Council January Study Session focused on several key topics, which included:

- What type of businesses to license? *Answer: All medical marijuana licenses plus the addition of retail marijuana store, marijuana cultivation facility, marijuana products manufacturing facility, and marijuana testing facilities.*
- Where in the City should marijuana businesses be located? *Answer: Allow them in industrial districts with the possibility of allowing retail establishments in commercial districts.*
- What approval model should the city use for marijuana businesses? *Answer: Utilize an administrative land use process with a robust licensing program, including a hearing before a hearing officer.*
- Should the city limit the number of marijuana businesses within the city, and if so, how? *Answer: Revisit the existing separation requirements to be more in-line with other municipalities, while still protecting separation from key groups.*
- Should the city permit dual licensing? *Answer, yes with approved building, zoning, and licensing requirements.*
- Should the city limit the hours of operation? *Answer, yes: for medical marijuana the hours would be 8am-7pm and for recreational marijuana stores, the hours would be 8am-10 pm. For other marijuana licenses, the hours should be permitted at any time.*
- Should marijuana clubs be prohibited within the city? *Answer, yes.*

The discussion at the City Council February Study Session focused on refinement of several topics, including:

- What should the new distance separations be for marijuana uses? *Answer: remove separations from establishments outside of the city boundaries, private parks, fire stations, churches, community centers, non-conforming residential uses, and like-to-like businesses.*
- Should marijuana uses be allowed in commercial districts? *Answer: only retail marijuana uses should be allowed with a reduced separation from residential to 500 feet.*
- Is City Council comfortable with draft language approach for licensing these facilities? *Answer, yes*

The DRT believes that the Council goals of allowing these businesses only with a thorough licensing and review process, updating the separation requirements so that they are in line with other municipalities, and still protecting residential properties, will be accomplished through these updated regulations.

Summary:

The City's zoning marijuana regulations can be found in Article V of the LDC, dealing with uses. The updates affect the Land Use Table, the supplemental regulations and the definitions sections of the current LDC. NOTE: all the previous language sections are repealed with the adoption of this update. The changes required to be included within the City's code are as follows and can be found on the attached exhibit:

- 1) Update Table V-1 to reflect all nine marijuana license/use types with various zoning district approvals as a use by right, rather than a CUP. The two retail uses would also be allowed in C-3 zoning districts.
- 2) Update Sec. 21-5249 in the following areas:
 - a. Updated as it relates to locational restrictions. The marijuana uses will still have to be located at least 1000 feet from several uses, including schools, child care, alcohol and drug facilities, group homes, halfway houses, public park, and recreation center. Gone are the

separations from like to like uses, fire station, uses outside city limits, private parks, fairgrounds, non-conforming residential uses, and community centers. All measurements are measured from property line to property line.

- b. Updated as it relates to residential separations, all marijuana use types with the exception of the two retail stores use types must be located a minimum of 1000 feet from residential properties. The two retail store use types must be a minimum of 500 feet from residential properties. Again, all measurements are measured from property line to property line.
 - c. Updated language to reflect what happens when a “separated use” enters into an area AFTER an approved marijuana licensed business has been operational.
 - d. Updated as it relates to regulating signage and design, to help alleviate garish and out of control bright, reflective signs and buildings, while still allowing legal advertising devices.
 - e. Updated as it relates to prohibited uses within the city, including outside and offsite storage and use, membership clubs, home occupations, vapor clubs, and mixed use developments.
- 3) Update Sec. 21-11200 to reflect definitions for the marijuana use/license types.

The Development Review Team (DRT) Recommendation

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

Recommended Motion

To recommend approval:

I move that the Planning Commission recommend that City Council approve Ordinance #2048, an ordinance amending the Commerce City Land Development Code.

Alternative Motions

To recommend approval subject to condition(s):

I move that the Planning Commission recommends that City Council approve Ordinance #2048, an ordinance amending the Commerce City Land Development Code, subject to the following conditions:

Insert Condition(s)

To recommend denial:

I move that the Planning Commission recommends that City Council deny Ordinance #2048, an ordinance amending the Commerce City Land Development Code, because it fails to meet the following criteria:

List the criteria not met

I further move that based upon this finding, the Planning Commission recommends that the City Council deny Ordinance #2048.

Exhibits/Attachment Sheets

- Exhibit A:** Comparative License Types
- Exhibit B:** Comparative Zoning Districts
- Exhibit C:** Comparative Process
- Exhibit D:** Comparative Hours of Operation
- Exhibit E:** Comparative Current Separation Requirements
- Exhibit F:** Existing LDC Code
- Exhibit G:** Marijuana Comparison with Separation Changes
- Exhibit H:** Marijuana Cluster Map (North) With New Regulations
- Exhibit I:** Marijuana Cluster Map (South) With New Regulations
- Exhibit J:** Powerpoint
- Exhibit K:** Revised LDC Language