



MEMORANDUM

To: Whitefish City-County Planning Board

From: David Taylor, AICP, Director 

Date: February 18, 2010

RE: Medical Marijuana Dispensary Zoning Draft Ordinance

It is anticipated that after the Planning Board meeting and an opportunity for public comment, the Board will recess into a continuation of the work session on Medical Marijuana and where dispensaries would best be located within the planning jurisdiction of Whitefish. At the meeting of January 21, after considerable public testimony, the Board reviewed a staff memo containing information about medical marijuana dispensaries and caregivers and recommendations with regard to zoning such uses in the Whitefish planning jurisdiction. The Board ran out of time to provide input, therefore the work session was continued to the February 18 meeting.

Staff determined it would help facilitate the process to present some additional draft code language for the Board to consider as a starting point for more in depth discussion. Direction given at this meeting will result in a final draft ordinance to be presented to the Planning Board at your next scheduled meeting in March for a public hearing with anticipation that it then be forwarded to the City Council. The draft ordinance was also mailed out to the major dispensary providers that have been in touch with us for their input. The draft presents medical marijuana dispensaries as an expressly permitted use in the Business Service District (WBSD) and in the Secondary Business District/Casino Overlay (WB-2/Casino) zones. With an approved conditional use permit, they would also be allowed on a case-by-case basis in the other major commercial and industrial zoning districts (IH, WB-1, WB-2, WB-3, WB-4), as well as the SAG-5 zone where it fronts Highway 93 South only, as that area seems appropriate and has many grandfathered professional offices, nurseries, etc. Calling out the zoning districts where allowed under a single chapter in Special Provisions rather than in each individual zone enables us to include county-zoned areas in our jurisdiction in the change, since we cannot modify those zoning districts. If the new rural zoning designations are adopted by the City Council this month, we will also include those.

The draft ordinance includes specific performance standards in the conditions of approval such as buffers from schools, requirements that the uses within the dispensary not be visible to the public, a safety and security plan be in place, age limits of customers, a ban on sales of medicine or paraphernalia to people without state licensed cards, direction on how parking requirements should be met, and a ban on advertising matter visible to the public that shows images of marijuana or smoking utensils.

The draft also includes provisions and definitions that differentiate between caregivers and dispensaries. Currently there are dozens or more caregivers operating as a home occupation in the Whitefish area, and it is not the city's intention to over regulate them since they are allowed

under State law unless the traffic or other impacts violate the residential character of a neighborhood. To that end, we propose to review them just like we do with other home occupations, and we set a limit of twenty patients for each caregiver as a discussion point. I don't recommend that that number be reduced to less than ten. As we heard in the testimony from caregivers, a caregiver can have many patients that only get their medicine once or twice a month, while others require smaller doses weekly due to budget constraints. Twenty was an estimated amount that should be well under what would be consistent with the Home Occupation limitation of no more than eight vehicle trips per day visiting a site, and several caregivers have stated that after a certain number of patients, it is more convenient for them to operate out of dispensary rather than having people showing up at their homes or calling them all the time. Staff determined that it seemed logical to establish an overall limitation for caregivers as one way that they could be differentiated from dispensaries in the code. Most caregivers will operate under the radar, but if there is ever a problem or complaints with regard to the traffic or smell associated with one, staff can at least evaluate that establishment based on some criteria that would allow some limitations. If that number turns out to be too high, the city can always amend this ordinance in the future.

The draft ordinance also provides for larger scale agricultural style greenhouses and growing operations to be allowed in our agricultural and country residential zones, as long as there is no dispensary on-site. Many dispensaries grow their products off site for security reasons, and since we have established zones that allow agriculture/silviculture, it seems to be appropriate.

Police Chief Bill Dial has commented that he would like to see the buffers around schools etc increased to 500'. 400' roughly provides a full city block buffer (see Exhibit B of the Planning Board memo from January 21st), which is a reasonable distance to consider. The 200' in the draft provides for roughly half a city block. In his email (Exhibit 2), the Chief also expressed concern about on-site consumption of marijuana at dispensaries. That practice is common in dispensaries throughout Montana and other states, and allows patients to sample various strains prior to purchasing larger quantities and the caregivers that work on site to take the medicine that they need throughout the day if they too are a patient. Staff recommends leaving that provision in, as the ordinance makes it clear that each dispensary is responsible for the well being of their patients if they leave the premises in an impaired state, much like bartenders are in drinking establishments.

The draft ordinance is attached for discussion, and includes a new Special Provisions chapter of the Zoning Code, as well as several new draft definitions.

11-3-31, Medical Marijuana

A. Medical marijuana dispensaries shall be allowed as a permitted use in the WBSD as well as the WB-2 with a Casino Overlay, or with a conditional use permit in the WB-1, WB-2, WB-3, WB-4, WI district, and in the SAG-5 district on properties fronting Highway 93 South only, subject to the following provisions:

1. No dispensary shall be located within 200', measured in a straight line regardless of intervening structures from property line to property line, of the following:
 - a. Public and private schools, pre-school through twelfth grade
 - b. Public libraries
 - c. Public playgrounds and parks
 - d. State licensed daycares, groups homes, pre-release centers, and personal care facilities
 - e. Churches
2. Dispensing, cultivation, and storage activities must take place indoors, and plants, products, accessories, or paraphernalia shall not be visible from public sidewalks or rights-of-way
3. Smoking or consumption of medical marijuana shall be allowed within the dispensary, provided that both of the following conditions are met:
 - a. Any on site consumption by smoking shall be in a fully enclosed, separately ventilated room which is separate from other areas of the dispensary, and which is vented directly to the exterior of the building
 - b. The dispensary shall ensure that no person who has consumed medical marijuana on-site is allowed to leave the premises if he/she is in a condition that may cause a hazard to themselves or others.
4. No marijuana consumption shall be allowed outside of the building, including in the parking lot, common areas, or sidewalks surrounding the property, and a notice stating that shall be displayed in a manner legible and visible to the clientele
5. Each dispensary shall have provide a safety and security plan, including the requirement for security cameras monitoring the exterior and all entrances into the premises
6. The dispensary shall keep records of all transactions and require proper identification of legal patients
7. No patients under the age of eighteen (18) shall be permitted in the dispensary at any time except in the presence of his/her parent or guardian, and a notice of that shall be displayed in a manner legible and visible to the clientele
8. No retail sales of paraphernalia or other items are permitted at the dispensary except to patients or designees

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9. Parking requirements shall be the same as those for medical and dental offices, with the exception that portions of a building used for manufacturing or other non-office uses shall be calculated separately.
 10. Advertisements, signs, displays, or other promotional material depicting medical marijuana, leaves, buds, cigarettes, or smoking paraphernalia shall not be visible from public sidewalks or rights-of-way
- B. Medical marijuana caregivers operating out of private residences and caring for up to twenty (20) patients are allowed subject to the requirements for Home Occupations, Section 11-3-13
- C. Medical marijuana growing facilities for more than twenty (20) patients, with or without multiple caregivers and with distribution through an off-site dispensary only, shall be allowed in the WI, AG-40, AG-20, SAG-10, WA, SAG-5, and WCR districts.

11-9-2 Definitions

Caregiver, Primary: An individual, 18 years of age or older, who has agreed to undertake responsibility for the well-being of a patient with respect to the cultivation and administration of medical marijuana and has registered with the State of Montana as a qualifying caregiver. A qualifying patient may have only one caregiver at any one time (per MCA 50-46-102).

Dispensary, Medical Marijuana: The use of any property or structure to cultivate and/or distribute, transmit, give, dispense, deliver, or otherwise provide marijuana in any manner in accordance with state statutes and administrative regulations to over twenty (20) patients, typically associated with more than one care-giver and visible to the public as a commercial or professional office storefront.

Patient, Medical Marijuana: A person who has been diagnosed by a physician as having a debilitating medical condition and that has registered with the State of Montana as a qualifying medical marijuana patient.

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