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TO: Chairman Apostolic and New Castle Planning Commissioners
FROM: Garfield & Hecht, P.C.
RE: Regulation of Marijuana – July 10, 2013 public meeting
DATE: July 3, 2013

INTRODUCTION

Following your last meeting in June, the Town Council passed an ordinance of first reading on July 2, 2013 to ban retail marijuana stores¹ in New Castle including associated offsite warehouse storage facilities for stores that might be located outside of New Castle. The Council has not decided to ban the three other types of uses allowed by statute and Amendment 64:

1. Retail marijuana cultivation facilities
2. Retail marijuana products manufacturers
3. Retail marijuana testing facilities

Staff is requesting direction from the Planning Commission for use in drafting a proposed ordinance to establish zoning and land use regulations for these types of uses. The Commission will then need to hold a noticed public hearing and take public comment before making a formal recommendation to Council with respect to such an ordinance. The public hearing is set for July 24, 2013.

ISSUES TO BE DECIDED BY PLANNING COMMISSION AND TOWN COUNCIL

The Planning Commission will make a recommendation to establish the zone districts where these uses may be allowed, any additional restrictions beyond those established at the state level, and whether the use would be permitted as a use-by-right or as a special review/conditional use. The Commission might also recommend a total ban. The Council will then make a final decision on these recommendations.

Separately, the Town Council will decide whether to ban any types of marijuana businesses other than retail stores and whether to enact a local licensing requirement in addition to the state licensing process for any or all of the allowed uses. The Planning Commission may wish to consider whether requiring a conditional or special review application, including a public

¹ The term “retail marijuana stores” and other similar terms used in this memo are defined in the new state statute. To avoid confusion, New Castle should use the same terms in any new regulations.

hearing before the Commission, is necessary *in addition* to any local licensing procedures enacted by Council.

Council will also need to consider whether to propose any local taxes in addition to the state law sales and excise tax questions which will be on the November 2013 ballot.

SUMMARY OF STATE LAW LAND USE REGULATIONS

The state has adopted the Colorado Retail Marijuana Code, C.R.S. § 12-43.4-101, *et seq.* That statute required the Department of Revenue, Marijuana Enforcement Division, to issue regulations by July 1, 2013. The Division did so as “emergency rules” subject to modification at a later date. This memo will summarize the portions of the Code and the Rules specifically pertaining local land use restrictions.

Colorado Retail Marijuana Code

C.R.S. 12-43.4-301(2)

A local jurisdiction may impose local licensing requirements including restrictions on time, place, manner, and the number of marijuana businesses. A local jurisdiction may also notify the state that it has no such local requirements and defer to the state license.

C.R.S. 12-43.4-302

A local jurisdiction that does not impose local regulations may give public notice to its citizens of a pending state application.

C.R.S. 12-43.4-307

A state license will not issue for a location where the use is not permitted by local zoning.

Retail marijuana stores shall not be approved if the building where the store is located is within 1000 feet of a school, alcohol or drug treatment facility, college, university, seminary, or residential child care facility. The local jurisdiction has authority to alter these requirements. However, they would appear to apply only to retail stores and not to the other types of uses where sales will not occur.

Emergency Rules

Security and Video Surveillance. All types of marijuana businesses must be locked and protected by security systems including video surveillance.

Waste Disposal. Marijuana waste must be disposed of in certain specific ways including making it unrecognizable and unusable by mixing with shredded paper, plastic, soil, or other methods.

Signage. The Division will hold public hearings to determine regulations on signs, marketing, and advertising. In the meantime, the Rules prohibit false or misleading advertising.

Local Enforcement. Local jurisdictions must designate a local enforcement officer who will be notified of new licenses and applications. Local jurisdictions have inspection and enforcement rights.

Restrictions on Cultivation Facilities

Direct sales to consumers are prohibited unless the facility is licensed to also include a retail store, which would be prohibited in New Castle. Onsite consumption of products is prohibited. An inventory tracking system must be utilized.

Local jurisdictions including the fire department are specifically authorized to conduct safety inspections and code enforcement inspections. Annual fire safety inspections are authorized.

Restrictions on Products Manufacturing Facilities

Consumer sales and onsite consumption are prohibited. Refrigeration is required for perishable items. Health Department standards for food products apply. Additional regulations for sanitary conditions are included.

Restrictions on Testing Facilities

Sale and consumption are prohibited. Testing facilities may not be owned by an owner of other types of marijuana establishments.

Transportation

Transportation of product will require record-keeping including a transportation manifest. Local jurisdictions may restrict such uses on particular routes or streets.

Off-Premises Storage

A retail marijuana business is permitted one off-site warehouse storage facility. Security requirements apply.

NEW CASTLE REGULATORY ISSUES

Staff requests direction on the following issues to prepare a draft ordinance for the public hearing on July 24.

1. Zone Districts. **Where should these uses be allowed?** It seems obvious that all of these uses are generally not compatible with any residential zone district. Further, in light of the vested rights for Castle Valley Ranch PUD and Lakota Canyon Ranch PUD, it seems inappropriate to include these uses in either development, or at least not without a request from the developer for unplatted areas. Other potential districts include the following:

C-1 Commercial District. This is the downtown core. Permitted uses presently include bakery and doughnut shop, pharmacy, and printing shop. Conditional uses include water and wastewater treatment, mortuary, municipal shop, small engine repair, and others.

C-2 Commercial District. Special review uses include unspecified “commercial uses” and retail establishments requesting wholesale sales. Fabrications and repairs are contemplated uses.

Industrial District. Permitted uses include wholesale and retail sales of various products not including marijuana or food products, warehouse, and bottling plant. Conditional uses include anything not specifically defined as prohibited or permitted. Thus, with no action by the Planning Commission or Council, marijuana uses would be conditional uses in this district.

Performance District. Conditional uses include “wholesaling” and “retail or wholesale business.”

Highway Business District. Conditional uses include “retail or wholesale business” and “warehousing or manufacturing industry.”

Commercial General District. Permitted uses include some types of wholesale and retail establishments for construction materials. Conditional uses include anything not permitted or prohibited, like the Industrial District.

Commercial Transitional District. Conditional uses include retail and wholesale businesses, limited industrial uses, and wholesaling or manufacturing industries.

Based on a review of the various zone districts in the Town, marijuana establishments would seem to be most compatible with other uses currently authorized in the Industrial District, Highway Business District, Commercial General District, and Commercial Transitional District. For various reasons including available property for new business uses, Staff recommends limiting retail marijuana establishments to the Industrial District and banning them outright in all other zone districts.

The Commission should review the map of these districts and determine whether the proposed uses are appropriate in any or all of them.

2. Review Criteria. **Should the uses be permitted outright or subject to review as conditional use permits requiring a public hearing?**

The answer to this question may depend on whether Council decides to enact a local licensing requirement. If it does, then requiring a separate CUP hearing in addition to a license hearing before Council may be overkill and impose unnecessary burdens on both the applicant and staff. On the other hand, there may be some zone districts where nearby property owners should be offered the right to comment specifically on land use concerns, and making any of these businesses a use by right may be inconsistent with Council's decision to ban retail stores. On balance, therefore, Staff recommends adding the uses as conditional uses in the Industrial District.²

3. Additional Regulations. **Should the Town impose specific land use regulations on marijuana uses in addition to any local licensing requirements set by Council?**

Please note that the Town Code already requires all uses to comply with the performance standards set forth in Section 17.72.090. These standards regulate smoke, particulate matter, dust, odor, gas, fumes, glare, vibration, radiation, electrical disturbances, noise and water pollution.

The Town Code also includes restrictions on what can be put into the Town's sewer system, which could be implicated for products manufacturing or for chemicals and fertilizers associated with grow operations. Section 13-32.050 of the Code specifically authorizes the Town to impose restrictions and require pretreatment of industrial wastes if necessary.

With respect to irrigation water, the Town may wish to consider whether the current EQR schedules adequately addresses the amount of water that would be required for these uses based on fixture counts. That is a question for Town Council, but land use application requirements could include information on water demand.

Additional subjects that could be addressed include the following:

- Set-backs from schools, churches, or other uses
- Set-backs from public roads or sidewalks
- Signage and advertising
- Fencing
- Hours of operation
- Limiting the total number of business within the town or any particular district
- Security measures such as requiring a private company to respond to alarms
- Site plan requirements
- Periodic review by staff, the Commission, or Council

² The Town Code uses the terms "special review uses" in some zone districts and "conditional uses" in other districts, but they are both subject to the same procedures under the "Conditional Use" process which requires a noticed public hearing before the Planning Commission. It is anticipated that any license hearing would occur before Council at the same time it acted on the recommendation from the Planning Commission's hearing.

- Automatic expiration or renewal requirements for permits
- Water and wastewater provisions

CONCLUSION

Following discussion and direction, staff will prepare an ordinance for consideration at the next meeting.