La Plata County Colorado
Office of the
La Plata County Attorney

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MEMORANDUM

To: Brad Blake, Julie Westendorff, Gwen Lachelt
From: Daniel Tom, Assistant County Attorney
Date: December 7, 2017
cc: Joanne Spina, Sheryl Rogers, Kim Perdue, Kathleen Lyon, Marianna Spishock and Dan Murphy
Re: **Proposed Updates to Marijuana Code**

This memorandum discusses needed and possible amendments to the County's marijuana code and its land use code provisions relating to marijuana. Section I discusses needed amendments to existing La Plata County Code sections that have been prompted by the Marijuana Enforcement Division's new regulations but are somewhat perfunctory in nature. Section II is a discussion of additional amendments but such amendments are more complicated as they require a policy discussion and direction from the Board. Section III proposes amendments based upon shortcomings noted in our existing Code by staff and, finally, Sections IV and V address two issues previously reviewed by the Board but because of new developments, additional Board direction is required.

I. Routine Code Updates Prompted by New Regulations:

- **Prohibited Third Party Acts**: The Colorado Marijuana Enforcement Division ("MED") has adopted new regulations related to acts by third parties making the licensee responsible for prohibited acts/conduct of a third party.[1] First, it prohibits a licensee from engaging third parties to perform any acts or conduct that the licensee is prohibited from performing on his/her own behalf. Second, when a third party is appropriately performing acts on behalf of a licensee (i.e. employees and contractors), it clarifies that the licensee is responsible for the actions of those third parties. Finally, the licensee may be subject to license denial or administrative actions, fines, suspension or revocation of a license based on acts and/or omissions of the third party. **Recommended action**: Update the LPC code provisions on moral character and enforcement to include the same prohibitions on third party acts.

- **Non-Colorado Resident's Finding of Suitability**: The MED has adopted changes to the finding of suitability for Non-Colorado residents who are Direct Beneficial Interest

[1] M 204 – Ownership Interests of a License: Medical Marijuana Businesses and R 204 – Ownership Interests of a License: Retail Marijuana Establishments.

Owners. A Direct Beneficial Interest Owner is any person or closely held business that owns share(s) or stock(s) in a licensed marijuana business. [2] Currently, a Direct Beneficial Interest Owner who has not resided in Colorado for at least one year prior to the application needs to submit a request for a finding of suitability from the MED. Under the prior MED rules, the finding of suitability was valid for an indefinite period. The amended MED rules, states a finding of suitability is valid for only one year from the date of its issuance. It is also grounds for denial of an application if a Non-Colorado resident does not obtain a finding of suitability within the year prior to applying to become a Direct Beneficial Owner. The amended MED rule will require amendments to our code because our code does not reflect that a finding of suitability is valid for one year nor does it provide that a finding of suitability shall be grounds for denial of the local application. **Recommended action:** Update LPC codes to ensure consistency with State requirements.

- **Medical Marijuana Business Operator License**: C.R.S. § 12-43.3-301(f) of the medical marijuana statue was amended to allow a Local Licensing Authority ("LLA") to issue a license to Medical Marijuana Business Operators. The legislature previously failed to provide for licensing of medical marijuana business operators when it addressed retail marijuana business operators. A Medical Marijuana Business Operator is an entity or person who is not an owner but is licensed to provide professional operational services to a medical marijuana establishment. **Recommended action**: La Plata County does not require a local license for Retail Marijuana Business Operators so our update would clarify that a license is not needed for the new category of Medical Marijuana Business Operators.

II. Policy Questions Prompted by New Amendments:

A. Medical Marijuana Research/Development Facility and Cultivation Policy Question:

Background: The *medical* marijuana statutes were amended to permit two new types of Medical Marijuana Businesses known as a Medical Marijuana Research and Development Facility Licenses ("R&D Facility") and Medical Marijuana Research and Development Cultivation Licenses ("R&D Cultivation").[3] A R&D Facility License allows a licensee to possess medical marijuana for limited research purposes. The licensee can possess only the approved amount of medical marijuana needed for the research project and the R&D Facility may co-locate with a commonly-owned Medical Marijuana Testing Facility.[4]

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[2] R 231.1 Finding of Suitability, Residency and Reporting Requirements for Direct Beneficial Interest Owners and M 231.1 – Finding of Suitability, Residency and Reporting Requirements for Direct Beneficial Interest Owners.

[3] A Medical Marijuana Business is a licensed Medical Marijuana Center, a medical Marijuana Infused Products Manufacturer, an Optional Premises Cultivation Operation, a Medical Marijuana Testing Facility, a Medical Marijuana Business Operator, a Medical Marijuana Transporter, a Marijuana Research and Development Facility or a Marijuana Research and Development Cultivation. See also, C.R.S. § 12-43.3-301(g) and (h)

[4] C.R.S. § 12-43.3-408(1)(a) and (2). C.R.S. § 12-43.3-104(13); see also M1901.

A R&D Cultivation License allows a licensee to grow, cultivate, and possess medical marijuana, and to transfer medical marijuana to a R&D Facility or another R&D Cultivation. R&D Cultivation Licensees can cultivate up to 500 medical marijuana plants and can have 20 pounds of medical marijuana on the licensed premises. Both license types may produce medical marijuana concentrate.

LLA Requirements: A R&D Facility and R&D Cultivation are subject to all "local licensing requirements" as determined by the LLA.[5] As such a LLA may determine that the Licensed Premises for these uses should be subject to inspection by the local fire department, building inspector, or code enforcement officer to confirm health and safety standards are present. C.R.S. § 12-43.3-301(1) allows the LLA to treat a R&D Facility and R&D Cultivation like other Medical Marijuana Businesses.

Policy Question: As to these two types of licenses, the Board may choose to:

1. License both types at the local level; or
2. License one but not the other; or
3. License neither at the local level but allow their presence in La Plata County recognizing that they will be licensed by the State; or
4. Prohibit these facilities in La Plata County.

Recommended action: The Building Department recommends the Board license both R&D Facilities and R&D Cultivation. The Board should also take the following into consideration when making this decision:

- R&D Facilities can share a Licensed Premises with a commonly-owned Medical Marijuana Testing Facility, which the LLA already licenses. Failing to license or to prohibit a R&D Facility which can be located on the same Licensed Premises as a co-owned Medical Marijuana Testing Facility could cause complication with inspections.
- R&D Facilities can obtain Medical Marijuana/Concentrate/Infused-Products from Optional Premises Cultivation, a Medical Marijuana-Infused Products Manufacturer, or a R&D Cultivator. Since R&D Facilities do not have to solely purchase medical marijuana from a R&D Cultivation, the Board could choose to only license R&D Facilities and prohibit R&D Cultivations.
- R&D Cultivations and R&D Facilities may produce medical marijuana concentrate. Currently, the LLA issues licenses to medical marijuana optional premises cultivation operations and medical marijuana-infused products manufacturers, which can produce medical marijuana concentrate. Failing to license or prohibit R&D Cultivations and R&D Facilities allow these new licensees to produce marijuana concentrate without the same health/safety requirements imposed upon current licensees.

[5] C.R.S. § 12-43.3-301(1)

B. Marijuana Plant Limits Policy Questions:

Background: C.R.S. § 18-18-406 and C.R.S. § 25-1.5-106 were amended to cap the number of recreational and medical marijuana plants that can be possessed or grown on a *residential* property. The amendments were passed to address illegal marijuana grows occurring in residential neighborhoods and grows that contribute to black market/grey market marijuana. The amendments broadly define residential property for both medical and recreational use as a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Residential property also includes the real property surrounding a structure, owned in common with the structure that includes one or more single units providing complete independent living facilities. By way of application, under the previous law, if 5 individuals lived in a residential property all 5 could grow 6 plants for recreational use allowing for a total of 30 plants in the residence. Under the new law 5 individuals living in a residence can now only grow a maximum of 12 plants in the residence.

Violators of the new amendments face criminal prosecution. Specifically, C.R.S. § 18-18-406, which is the criminal code relating to marijuana offenses, was amended to generally cap the number of *recreational* marijuana plants that can be possessed or grown on a residential property at 12 plants but a local jurisdiction may expressly permit more than 12 plants. Similarly, C.R.S. § 25-1.5-106, the statute regarding caregivers and *medical* marijuana patients, was amended, initially capping the number of marijuana plants a patient or caregiver can grow to 12 plants at a residential property. However, if the local jurisdiction does not set a plant limit, the amendment allows a patient and caregiver to grow up to 24 plants at a residential property. Patients and caregivers are still allowed an extended grow of up to 99 plants, but anything in excess of 24 plants (or the limits adopted by the local jurisdiction) must be grown on property other than residential property. These off-site grows are subject to local land use codes/permits (i.e. commercial or industrial properties) as discussed below.

Policy Questions:

1. Whether the County should impose a limit on the number of recreational/medical marijuana plants that can be possessed or grown on residential property to 12 plants? If no limit is imposed, then *medical* marijuana patients and caregivers may grow up to 24 plants in a single residence.
2. If no plant limit is adopted or a 24-plant limit is adopted for medical marijuana patients and caregivers, will the County require patients/caregivers to provide notice to the County of their residential cultivation operation? If, so La Plata County must establish forms and documents to capture that information and keep such information confidential.
3. If registration of residential grows is required will the BoCC require zoning, building, and use inspections?
4. From a land use perspective, what type of land use permit will be required for patients and caregivers who seek to grow more *medical* marijuana plants than permitted on residential property? What about individuals who seek to grow *recreational* marijuana?

5. Does the BoCC want to establish a concurrent Petty Offense for violation of the State and/or local plant count limit?

Recommended action: The Sheriff's and District Attorney's Office have both recommended a 12-plant limit as to both medical and recreational marijuana. The Board should also take the following into consideration when making a decision:

- Most likely the amendment will be challenged as unenforceable and unconstitutional. As an example, a Denver law firm withdrew an initiative to place on the ballot a repeal of the amendments.
- As to policy question 5 above, criminal penalties for illegal grows on land and on residential property vary. Under illegal grows on residential properties the criminal violations can be from a drug petty offense 1 (first offense more than 12 plants) to a drug felony 3 (second/subsequent offense more than 24 plants). Illegal grows on land can be a drug misdemeanor 1 (not more than 6 plants) to a drug felony 3 (more than 30 plants). Since there are criminal consequences it may be unnecessary to adopt a concurrent petty offense.
- As to policy questions 2 above, the Sheriff's Office has not given an opinion regarding its preference on notice of residential cultivations. However, it is believed that in the past obtaining information regarding medical marijuana patients, caregivers, and grows from the MED has been challenging and therefore such notice may be helpful. On the other hand, there is a burden associated with collection and maintenance of the data.

C. Land Use Issues and Marijuana Plant Limits In Excess of Those Allowed on Residential Property

Background: HB 17-1221's 12 plant limit on residential marijuana cultivation, and its requirement that non-residential cultivation of more than 12 plants be subject to local zoning and use restrictions, requires an evaluation of whether and how the County's land use code ("LPLUC") allows cultivation of more than 12 plants on non-residential property. Currently, the LPLUC permits personal marijuana cultivation as an accessory use subject to LPLUC § 82-5. But, section 82-5 predicates accessory uses on a primary residential use, *see* LPLUC § 82-5(I)(A-B), so any personal cultivation of more than 12 plants permitted as an accessory use under section 82-5 would violate HB 17-1221.

Thus, under our current land use code, a person wishing to grow more than 12 plants for personal use, or a caregiver growing more than 12 plants (or 24 plants if the plant count is not limited by the County) to supply one or more medical marijuana patients, must obtain a Class II land use permit for a marijuana facility, LPLUC §§ 82-209, 82-210. The Class II permit approval process, however, entails a robust and sometimes costly review process, and effectively could preclude personal cultivation of more than 12 plants by any patient or caregiver, notwithstanding their constitutional entitlement to cultivate up to 99 plants, if medically necessary. *See, e.g.,* Colo. Const. Art. 18 § 14; C.R.S. § 25-1.5-106(8.5)(b).

The County is working to develop a new land use code, the current draft of which does contemplate that a use may be accessory to a non-residential, primary use. Thus, a medical marijuana patient or caregiver with a medical authorization to grow more than 12(or 24), but

no more than 99, plants could do so pursuant to an administrative permit, so long as they demonstrate that the cultivation is incidental or subordinate to, and supportive of, the principal, non-residential, use. Hypothetically, the proposed provisions might authorize personal cultivation as an accessory to a commercial greenhouse or storage facility (subject to satisfying the other accessory use standards) but would preclude such cultivation, for example, on a vacant lot not already permitted for non-residential use.

Policy question: The Board should evaluate, as a policy matter, whether to pursue the option of permitting personal cultivation of marijuana on non-residential property as an accessory use, or whether to evaluate the option of developing a process for permitting personal cultivation as a primary, non-residential, use.

III. Staff Prompted Proposed Amendments

A. Proximity Issue with Marijuana Licensing and Land Use Regulations

Background: Both the County's marijuana licensing regulations and land use regulations contain proximity restrictions for marijuana facilities that prohibit applicants from locating permitted and licensed facilities within 1,000 feet from public or private schools, drug or alcohol treatment centers or certain child care facilities. Specifically, the two applicable provisions read as follows:

> Land Use Code – Section 82-210(VI) "No marijuana facility shall be located within 1,000 feet from any of the following uses whether such uses are inside or outside the unincorporated boundaries of the county: (i) any public or private preschool or elementary, middle, junior high, or high school; (ii) the campus of any college, university, or seminary, or **a residential child care facility**; or (iii) a drug or alcohol treatment center. For purposes of this provision, the distance between the marijuana facility and neighboring land use shall be measured in a direct line between the closest point of the project boundary and the closest point on the lot or parcel of neighboring land upon which any of the above referenced uses are located."
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> Marijuana Licensing – Section 7-54(I)(B) (retail); Section 7-5(I)(B) (medical) "A premises licensed under this article shall not be …Located within 1,000 feet from any of the following uses whether such uses are inside or outside the unincorporated boundaries of the County: (i) any public or private preschool or elementary, middle, junior high, or high school; (ii) the campus of any college, university, or seminary, or **a residential child care facility**; or (iii) a drug or alcohol rehabilitation treatment center. For purposes of this provision, the distance shall be calculated by direct measurement between the closest point of the licensed premises and the closest point on the property line of neighboring land upon which any of the above referenced uses are located. A specific finding of fact shall be made that the proposed premises is not within 1,000 feet of the above-referenced uses …."

The County's regulatory language is based, in part, on State law regarding medical marijuana dispensaries. The law prohibits issuance of a State license for a location:

> (d)(I) If the building in which medical marijuana is to be sold is located within one thousand feet of a school, an alcohol or drug treatment facility, the principal campus of a college, university, or seminary, or **a residential child care facility**. The provisions of this section shall not affect the renewal or reissuance of a license once granted… nor shall the provisions of this section apply…to a license in effect and actively doing business before said principal campus was constructed. The local licensing authority…may vary the distance restrictions imposed by this subparagraph (I) for a license or may eliminate one or more types of schools, campuses, or facilities from the application of a distance restriction established by or pursuant to this subparagraph (I).
>
> (II) The distances referred to in this paragraph (d) are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which medical marijuana is to be sold, using a route of direct pedestrian access.
>
> (III) In addition to the requirements of section 12-43.3-303(2), the local licensing authority shall consider the evidence and make a specific finding of fact as to whether the building in which the medical marijuana is to be sold is located within any distance restrictions established by or pursuant to this paragraph (d). CRS § 12-43.3-308(1).

Note that there is not a similar State law prohibiting retail marijuana stores from being located within any specified distance from these locations. Further, as mentioned above, the State law relates solely to dispensaries and does not cover cultivation, manufacturing or testing facilities.

Issues: Recently, some applicants and licensees have raised questions regarding the County's interpretation of the term "residential child care facility" and the standard used to measure the distance of marijuana facilities from schools, rehabilitation centers and child care facilities. Should the County's proximity requirements be amended?

Recommended action: At this time, staff recommends amendments to both the land use code and licensing regulations to conform to County practice and resolve potential ambiguities in the regulations.

Child Care Facilities: Historically, the planning department has interpreted the term "residential child care facility" to mean any child care facility – including daycares, camps or other licensed facilities – licensed by the State of Colorado. However, our regulations and the State statute upon which they are based are silent with respect to the definition of a "residential child care facility."

Recommended action: To ensure that the planning department's past practices are appropriately codified, staff recommends amending the land use and marijuana licensing regulations to clarify that permitted and licensed marijuana facilities cannot be located within

1,000 feet of any child care facility licensed by the State of Colorado, Department of Human Services under the Child Care Licensing Act, with the exception of foster homes.

Distance Measurement: Currently, the land use code and marijuana licensing code contain slightly different language regarding measurement of the distance between the permitted and licensed marijuana facility and a school or other campus. In addition, the distance is measured based on direct lines (i.e., as the crow flies) between the two uses, whereas State law measures distance based on direct pedestrian routes.

Recommended action:

1. Regarding marijuana dispensaries and stores (where patients and the public are generally present) staff recommends changing the distance measurement to the pedestrian route. This will help conform our regulations with State law and treat such stores in the same manner as facilities subject to liquor licensing.
2. With regard to cultivation, manufacturing or testing facilities, since the public is not generally allowed in these types of facilities, staff recommends maintaining measurements based on direct lines, as the crow flies. However, to clarify where the measurements are taken from, we recommend updating the land use and marijuana licensing regulations to clarify that the distances are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which marijuana and/or marijuana products is cultivated, manufactured or tested.

IV. Issues with LLA Requirement for Health Code Inspections on Facilities

Background: Recently, there have been issues with San Juan Basin Health ("SJBH") conducting health code inspections as required by the LLA and the County's code. The LLA requires new licensees and renewals for medical/recreational show "proof of compliance with San Juan Basin Health Department health standards, if applicable." The County was in the process of working on an IGA with SJBH to conduct health code inspections on marijuana facilities. However, SJBH has decided not to enter an IGA with the County and will not conduct health code inspection on marijuana facilities.

Board Options:

1. LLA could enter a contract with an outside private contractor to provide the services and impose fees necessary to recover costs; or
2. LLA staff could internally conduct the inspections; or
3. Waive or discontinue the health code inspection requirements in the County's code; or
4. Discontinue licensing of certain marijuana facilities because of health concerns.

V. Issues with Licensing of Transporters and Off-Premises Storage

Background: The current County Code does not impose a separate local licensing requirement on individuals and entities for a Medical/Retail Marijuana Transporters Licenses.[6] For licensing purposes, such individuals and entities must only apply to and possess a valid and current license issued by the State. Licensed Transporters can apply with the MED for more than one permitted off-premises storage in a local jurisdiction that permits marijuana centers, subject to local licensing requirements. The LLA permits off-premises storage for a retail/medical marijuana business that receives a license from the LLA. Since the LLA does not license Transporters, indirectly we do not license a Transporter's off-premises storage facilities.

Recently, the LLA has received inquiries into the licensing requirement for Transporters and Transporter's off-premises storage. It is the Building Department's understanding that previously the MED allowed marijuana businesses to share employees to transport marijuana. However, the MED has discontinued this practice and requires each business transport their own marijuana or use a licensed transporter.

Board Options:

1. Make no changes to current regulations; or
2. Adopt licensing regulations for retail/medical marijuana Transporter's premises and retail medical marijuana Transporter's off-premises storage, subject to inspection by local fire department, building inspector, or code enforcement officer for health and safety concerns and all other licensing requirements for a marijuana business.

Recommended Action: The Building Department recommends that the Board license both Retail/Medical Marijuana Transporters and Retail/Medical Transporter's Off-Premises Storage.

The Board should also take the following into consideration when making a decision:

- The MED regulates Retail and Medical Marijuana Transporters and their off-premises storage. A Transporter can store for 7 days marijuana at its licensed premises or off-premise storage facility. The Transporters license is valid for 2 years and they are permitted a dual retail and medical Transporter operation at a co-owned location.
- Depending on the type of marijuana being transported and stored (raw, edible, etc.), Transporter and associated off-premises storage may require a specific type of building permit. As an example, all medical marijuana centers are classified as Group M and need to meet all applicable requirements to obtain a Group M building permit. The Building Department has noted that the licensee will need to obtain permits to address the specific needs of the project.

[6] A transporter is licensed to transport either retail or medical marijuana or infused products from one retail or medical facility to another and to temporarily store the transported marijuana at its licensed premises. The County has authority to regulate Medical Marijuana Transporters under C.R.S. § 12-43.3-301(e) and Retail Marijuana Transporters under C.R.S § 12-43.4-301.

PROPOSED UPDATES TO LPC MARIJUANA CODE—2017

ROUTINE CODE UPDATE PROMPTED BY NEW REGULATIONS

- Prohibited Third Party Acts: Colorado Marijuana Enforcement Division ("MED") has adopted new regulations making the licensee responsible for prohibited acts or conduct of a 3rd party.
  - Recommended action: update LPC code provisions related to moral character and enforcement to include the same prohibition on 3rd party acts.
- Non-Colorado Resident's Finding of Suitability: non-Colorado residents can become Direct Beneficial Interest Owners of a marijuana business if the MED makes a finding of suitability. The MED has adopted rules making the finding of suitability for non-Colorado residents valid for one year and failing to obtain a finding of suitability grounds for denial of an application.
  - Recommended action: update LPC code to ensure consistency with MED requirements.

ROUTINE CODE UPDATE PROMPTED BY NEW REGULATIONS

- Medical Marijuana Business Operators License: the medical marijuana statute was amended to allow a Local Licensing Authority ("LLA") to issue a license to Medical Business Operators.
  - Recommended action: La Plata County does not require a local license for Retail Marijuana Business Operators. Update code to clarify that a license is not needed for the newly created Medical Marijuana Business Operators.

POLICY QUESTIONS PROMPTED BY NEW AMENDMENTS

- Medical Marijuana Research & Development Facility ("R&D Facility) and Medical Marijuana Research & Development Cultivation ("R&D Cultivation) Policy Question:
  - Background: Medical marijuana statutes were amended to permit 2 new types of medical marijuana businesses: R&D Facilities and R&D Cultivation, both of which are subject to local licensing requirements.
  - Policy question: the Board may choose to:
    - License both types at the local level; or
    - License one but not the other; or
    - License neither at the local level but allow in La Plata County subject to state licensing requirements; or
    - Prohibit these types of facilities in La Plata County.
  - Recommended action: the Building Department recommends licensing both R&D Facilities and R&D Cultivations.

STAFF PROMPTED PROPOSED AMENDMENTS

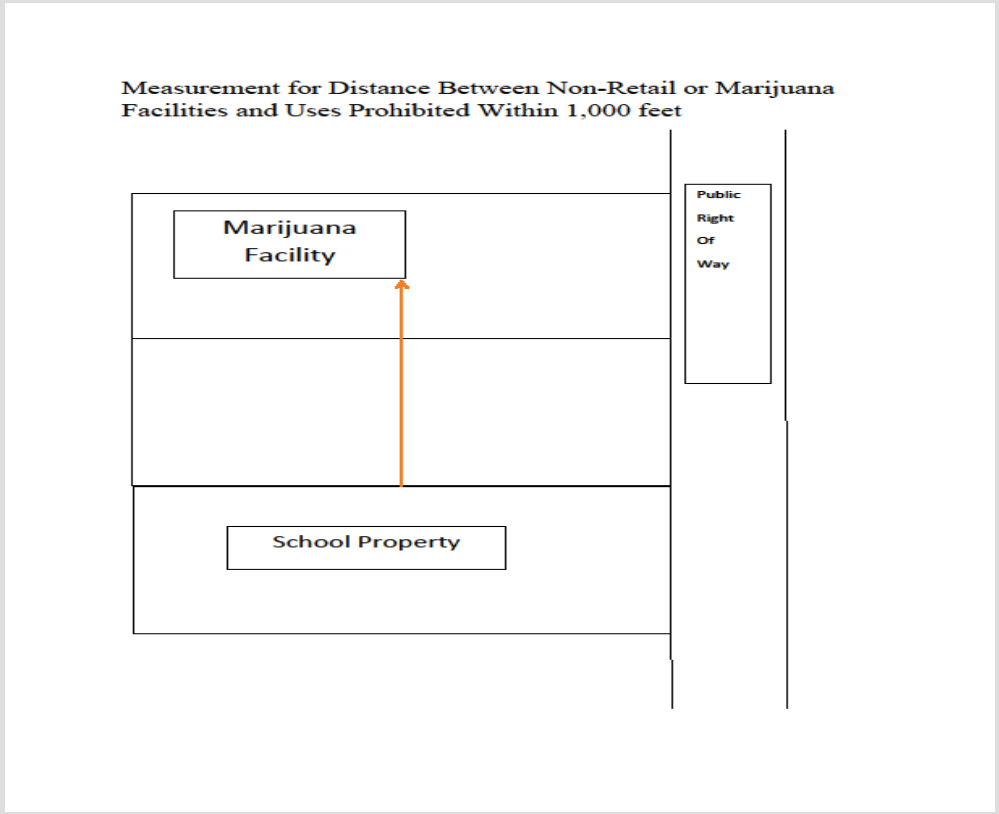
- Proximity Issue with Marijuana Licensing and Land Use Regulations
  - Background: Both the licensing code and the land use code contain proximity restrictions prohibiting licensed facilities within 1,000 feet of a school, rehabilitation center, and certain child care facilities.
  - "Residential child care facility" issue: Questions concerning the interpretation of "residential child care facility" in relation to proximity issue.
    - Recommended action: staff recommends amendment to both the land use code and licensing regulations to resolve ambiguities and to clarify that permitted and licensed marijuana facilities cannot be located within 1,000 feet of any child care facility licensed by the Colorado Dept. of Human

STAFF PROMPTED PROPOSED AMENDMENTS

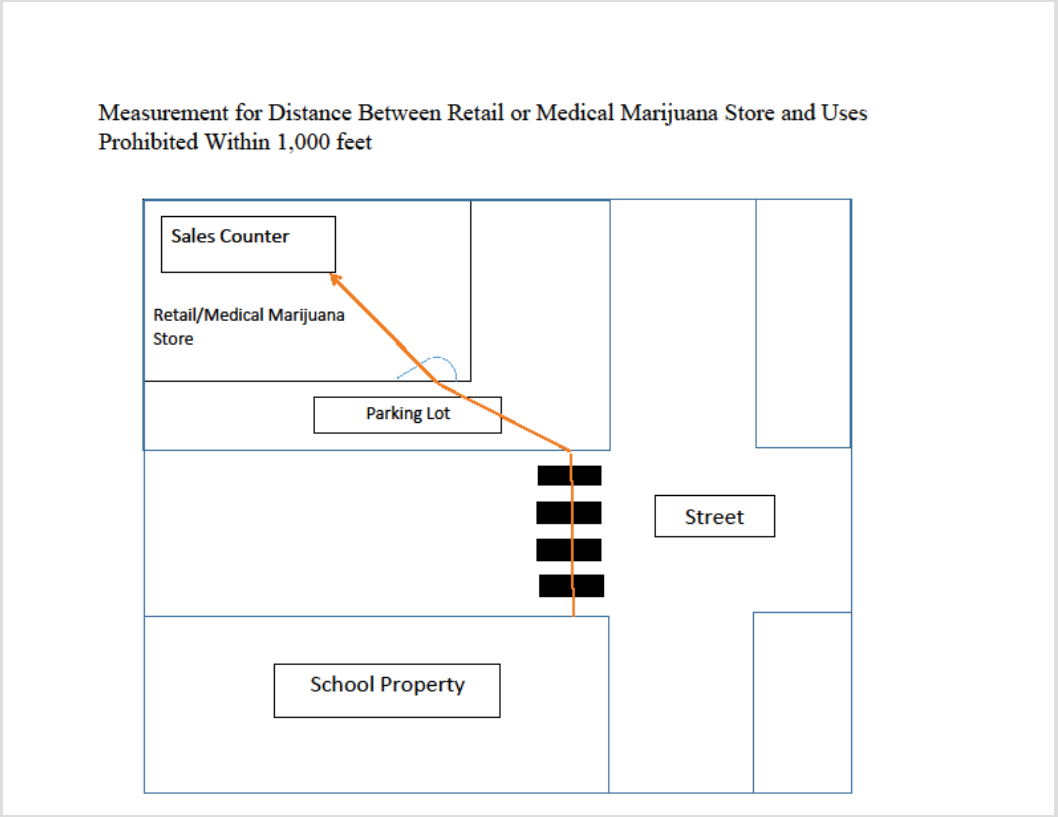
- Proximity Issue with Marijuana Licensing and Land Use Regulations Ctd.
  - Distance Measurement Issue: land use code and marijuana licensing code contain differing language regarding the measurement of distances between permitted and licensed facilities and schools, rehabilitation centers, and child care facilities, requiring distance to be measured on a direct line (i.e. as the crow flies). Additionally, the state requires distance to be measured based on a direct pedestrian route.

STAFF PROMPTED PROPOSED AMENDMENTS

- Direct Line Measurement



- Direct Pedestrian Route



STAFF PROMPTED PROPOSED AMENDMENTS

- Proximity Issue with Marijuana Licensing and Land Use Regulations Ctd.
  - Distance Measurement Issue Continued
    - Recommended action:
      - Staff recommends adoption of a pedestrian route measurement of distance for marijuana dispensaries and stores.
      - Staff recommends maintaining a direct line measurement of distance for cultivation, manufacturing or testing facilities and clarification that distances are computed by direct measurement from nearest property line of the land used for a school, rehabilitation center, or residential child care facility.

STAFF PROMPTED PROPOSED AMENDMENTS

- Issues with LLA Requirement for Public Health Inspections on Facilities
  - Background: County code requires licenses and renewals show "proof of compliance with San Juan Basin Health Department ("SJBH") health standards." SJBH is no longer willing to conduct the inspections.
  - Board Options:
    - LLA could contract with a private contractor to provide the services; or
    - LLA staff could internally conduct inspections; or
    - Waive/discontinue health code requirements in County's code; or

STAFF PROMPTED PROPOSED AMENDMENTS

- Issues with Licensing of Transporters and Transporters Off-Premises Storage
  - Background: The County code does not impose a separate local licensing requirement for Medical & Retail Marijuana Transporters Licenses and Medical & Retail Marijuana Transporter's Off-Premises Storage facilities. The Building Department would like to readdress this issue with the Board.
  - Board Options:
    - Make no changes to current regulations; or
    - Adopt licensing regulations for Retail/Medical Marijuana Transporter's premises and their off-premises storage, subject to local licensing requirements.
  - Recommended action: The Building Dept. recommends both

POLICY QUESTIONS PROMPTED BY NEW AMENDMENTS

- Marijuana Plant Limit Policy Question
  - Background: Recreational and medical marijuana statues were amended to cap the number of recreational and medical marijuana plants that can be grown on a *residential property*.
    - Amendments: (1) capped number of *recreational* marijuana plants that can be grown/possessed on a residential property at 12 plants unless local jurisdiction allows a higher limit; and (2) capped at 12 plants the number of *medical* marijuana plants a patient or caregiver can grow/possess on residential property. If no plant is count is adopted *medical* marijuana patients/caregivers can grow 24 plants on *residential property.*
    - *Medical* marijuana patients/caregivers are still allowed an extended grow of up to 99 plants. Anything in excess of the local jurisdiction limit needs to be grown on property other than

POLICY QUESTIONS PROMPTED BY NEW AMENDMENTS

- Marijuana Plant Limit Policy Question Continued:
  - Policy Questions:
    - Should the County impose a limit on the number of recreational/medical marijuana plants that can be possessed or grown on a residential property to 12 plants?
    - If no plant limit is adopted or a 24 plant limit is adopted for medical marijuana, will the County require medical marijuana patients & caregivers to provide notice of residential cultivation operation?
    - If registration of residential grows is required, will the Board require zoning, building and use inspections?
    - From a land use perspective what type of land use permit will be required for a: (1) medical marijuana patient/caregiver seeking to grow more medical marijuana plants than permitted on residential property and (2) individual growing recreational marijuana?
    - Does the Board want to create a concurrent Petty Offense for violating the State and/or local plant count limit?
  - Recommended action: The Sheriff's and District Attorney's Office recommend a 12 plant limit as to both medical and recreational marijuana

POLICY QUESTIONS PROMPTED BY NEW AMENDMENTS

- Land Use Issues & Marijuana Plant Limits In Excess of Those Allowed on Residential Property:
  - Background: The amendments capping marijuana residential cultivation requires any plants in excess of the (adopted) limits be grown on non-residential property subject to local zoning and use restrictions requiring an evaluation of how the County's land use code allows cultivation of more than 12 plants on non-residential property.
  - Policy questions: the Board should evaluate as a policy whether to pursue the option of permitting personal cultivation of marijuana on non-residential property as an accessory use or whether to evaluate the option of developing a process for permitting personal cultivation as a primary, non-residential, use.