

**REGULAR MEETING OF THE  
ARAPAHOE COUNTY PLANNING COMMISSION  
TUESDAY, OCTOBER 20, 2015 @ 6:30 P.M.**

**GENERAL BUSINESS ITEMS**

<b>APPROVAL OF THE MINUTES FROM SEPTEMBER 29, 2015</b> <i>(Click here to view draft minutes.)</i>	
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**REGULAR ITEMS**

<b>ITEM 1:</b> <i>(Click here to view packet.)</i>	<b>W14-002 AMENDMENT TO LAND DEVELOPMENT CODE (LDC) TO MODIFY SECTION 12-1800 MEDICAL MARIJUANA LAND USES TO MARIJUANA LAND USES AND FURTHER AMENDMENTS TO THE PROVISIONS OF THIS SECTION</b>	
<b>LOCATION:</b>	Countywide	<b>VOTE:</b>
<b>ACREAGE:</b>	N/A	<b>IN FAVOR</b>
<b>EXISTING ZONING:</b>	N/A	<b>OPPOSED</b>
<b>PROPOSED USE:</b>	N/A	<b>ABSENT</b>
<b>APPLICANT:</b>	Arapahoe County	<b>ABSTAIN</b>
<b>CASE MANAGERS:</b>	Jan Yeckes, Planning Division Manager; Tammy King, Zoning Administrator; Ron Carl, County Attorney	
<b>REQUEST:</b>	Amend Section 12-1800 of the LDC to better address Marijuana Land Uses in Unincorporated Arapahoe County	<input type="checkbox"/> <b>CONTINUED TO:</b>
<b>MOTION SUMMARY:</b>		<b>Date:</b> _____

**STUDY SESSION AGENDA ITEMS**

ITEM 1	TIER 1 COMPREHENSIVE PLAN DISCUSSION	DIRECTION/ACTION
<b>CASE MANAGERS:</b>	Julio Iturreria, Long Range Planner	Direction

**ANNOUNCEMENTS:**

- The next regular Planning Commission meeting is scheduled for Tuesday, November 3, 2015 (study session/training only).
- Planning Commission agendas, Board of County Commissioner agendas, and other important Arapahoe County information may be viewed online at [www.arapahoe.gov](http://www.arapahoe.gov) or you may contact the Planning Division at 720-874-6650.

**PLANNING COMMISSION MEMBERS:**

<b>Mark Brummel -</b>	<b>Richard Rader -</b>	<b>Paul Rosenberg, Chair Pro-Tem -</b>
<b>Diane Chaffin -</b>	<b>Jane Rieck -</b>	<b>Richard Sall -</b>
<b>Brian Weiss, Chair -</b>		

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**MINUTES OF THE SPECIAL MEETING OF THE  
ARAPAHOE COUNTY PLANNING COMMISSION  
TUESDAY, SEPTEMBER 29, 2015**

<b>ATTENDANCE</b>	<p>A special meeting of the Arapahoe County Planning Commission was called and held in accordance with the statutes of the State of Colorado and the Arapahoe County Land Development Code. The following Planning Commission members confirmed their continued qualification to serve:</p> <p>Brian Weiss, Chair; Paul Rosenberg, Chair Pro-Tem; Richard Rader; Jane Rieck; Richard Sall, Diane Chaffin.</p> <p>Also present were: Robert Hill, Senior Asst. County Attorney; Chuck Haskins, Sarah White, Engineer; Sherman Feher, Senior Planner; Jason Reynolds, Current Planning Program Manager; Julio Iturreria, Long Range Planning Program Manager; Larry Mugler, Demographics; Jan Yeckes, Planning Division Manager, Jeffrey Strauss, Facilities; and several members of the public.</p>
<b>CALL TO ORDER</b>	<p>Chair Weiss called the meeting to order at 6:30 p.m. and noted a quorum of the Board was present.</p>
<b>DISCLOSURE MATTERS</b>	<p>There were no Planning Commission member conflicts with the matters before them.</p>
<b>GENERAL BUSINESS ITEMS:</b>	
<b>APPROVAL OF THE MINUTES</b>	<p><b>The motion was made by Mr. Rosenberg and duly seconded by Mr. Sall to accept the minutes from the August 4, 2015 Planning Commission meeting.</b></p> <p><b>The motion passed unanimously.</b></p> <p><b>The motion was then made by Mr. Rosenberg and duly seconded by Ms. Rieck to accept the minutes from the August 18, 2015 Planning Commission meeting.</b></p> <p><b>The motion passed unanimously.</b></p>
<b>REGULAR ITEMS:</b>	
<b>Item 1:</b>	<p><b>Z14-009, Sky Mark Apartments / Preliminary Development Plan (PDP) – Sherman Feher, Senior Planner, Public Works and Development (PWD)</b></p>

Mr. Feher explained the relationship between the case heard on September 1, 2015, in relation to the Comprehensive Plan Amendment request, and the case being heard this evening. He introduced the application and made a correction to the number of acres in Denver and Arapahoe County from 4.9 to 5.2 and reported the trail access noted in the staff report as private would be available for public, per the applicant. Mr. Feher gave the staff recommendation for the case to be denied, based on the findings listed in the staff report. He distributed additional comments related to the case, copies of which were retained for the record.

Michael Sheldon, applicant's representative, introduced the project design team for Sky Mark Apartments, LLC. He noted the Comprehensive Plan relationship to the project was an interesting case and asked for an open mind on the concepts to be presented.

Jared Carlon, Norris Design, presented a PowerPoint, a copy of which was retained for the record. He explained the design team felt the project was the best choice for the property. He stated one of the reasons staff cited their opposition to the project was compatibility. He explained the compatibility was what made the project work. He reported it spread out the density, resulted in a better design than that approved within the City and County of Denver (Denver), and did not set a precedent with respect to the Comprehensive Plan (Comp Plan) because of the uses that surrounded the property where the project was proposed. Jared Carlon referenced a map of the property in relation to Parker Road and other surrounding developments. He stated density belonged along Parker Road. He said the Highline Canal provided an excellent recreational amenity that provided a great corridor throughout the region and also provided a barrier and a 100-ft buffer with mature trees between the proposed project and the neighborhood across the Highline Canal. He reported the setback from the nearest homes across the canal exceeded 150 feet. Jared Carlon reported The Villas at Sky Mark number of units, added to the proposed project, came out to an average of approximately 16 dwelling units per acre (du/ac). He showed the approval within Denver and the approval requested in Arapahoe County, which proposed to reduce the number of units between the Arapahoe/Denver projects to 190 units (95 in each jurisdiction). He

explained the building height would be five stories of residential over a two-story parking garage. He stated access would be from two existing points. He referenced an illustration of the pool amenity and club house. Further, perspectives of the proposed architecture and layout were shown to provide a feel for the project, noting these would be high-end and high-quality residences. Jared Carlon indicated he would go through a list of community and County concerns that had been identified. He started by providing a synopsis of what had been approved through zoning in Denver, which would be administrative and included a three-hundred-foot-tall, 22-story building with 276 units. He reported the Arapahoe County (AC) parcel would currently permit 30,500 s.f. of office space at a 30-ft building height. He explained the current proposal had 81 fewer units and a 210-ft reduction in proposed building height (from 300 feet to 90 feet). Jared Carlon referenced a map of parcels still available in the Four Square Mile area and indicated this is a unique condition. He stated there was only one parcel in the area with undeveloped adjacent parcels and compatible Denver zoning and land use. He disputed a claim made by the owner of the Creekside Office Development at the September 1, 2015 Comp Plan hearing that the building was on their land. He indicated this was not true and provided evidence of a reciprocal easement recorded 7/15/1988 for the purpose of pedestrian and vehicular ingress and egress to and from Parker Road. Jared Carlon reported the easement document stated future development into office or apartment buildings was contemplated and that no breach shall entitle any party to cancel, rescind or otherwise terminate the agreement. He stated that disputed the business owner's claim that the business had prescriptive rights, because the tenants had been using the land for parking for a number of years. Jared Carlon addressed economic impact. He reported the property owner had owned the site for over 35 years and had no offers to build offices in that time (several market cycles). He reported the estimated financial impact of new residents in the proposed project exceeded \$10 Million. He stated real estate taxes for current use were approximately \$12,000.00 / year; office would generate \$91,192.00 / year; and the proposed multi-family project would generate \$191,980.00 / year. Jared Carlon addressed traffic impact concerns. He reported CDOT access permits had been granted. He stated the project would result in a decrease in the amount of traffic

that was considered as acceptable, for permitting, based on prior zoning of the combined parcel. He presented the PDP approval criteria from the Land Development Code (LDC) and addressed how the project addressed compatibility (noting adjacent uses to north, east, south and west and noting key setbacks). Jared Carlon said the project teams felt two high-quality architecture buildings were more compatible than what was currently approved within Denver. He addressed convenience to the public, public health and safety, accessibility within and between developments, minimizing disruption to existing physiographic features, and ensuring appropriate amenities, enhancing usable open spaces. Jared outlined outreach efforts with referral agencies and surrounding neighborhood groups. He stated a commitment was made to meet all conditions listed in the staff report approval recommendation, in the event the PC elected to recommend approval of the PDP. Jared Carlon stated the approval would provide high-quality housing, revenue, lower density, and great development. He asked the PC members to imagine themselves as owners of the property for 35 years, where more than a half-million-dollars in taxes had been paid or that they were residents being told the land must remain undeveloped because there was no market for business use. He asked the PC members to approve the project as presented.

Mr. Sheldon reiterated the applicants would meet all the conditions in the staff report and any others the PC felt would be necessary to ensure the approval did not set a precedent for future applications on other properties within the Four Square Mile area. He noted the applicants originally went to the Four Square Mile group to get their input on architecture and building materials and colors. He stated the group had provided input on preferences, and the project architecture was amended to get their concurrence on design. He stated the applicants had worked with the neighborhoods to try to meet their concerns in proposing this project.

The PC asked several questions about traffic, specifically, related to the Arapahoe County parcel. The applicant explained the office alone would generate about 400 trips per day while the apartments could generate around 500 trips per day on the County portion of the property. The PC asked about the financial feasibility of building 12-14 stories of steel construction on the Denver side and the applicant replied it was financially feasible to do that; although,

they preferred to build what they proposed with the rezoning.

Ms. Chaffin asked the applicant if the proposal would increase the density just on the AC portion of the property and the applicant responded that it would if she were to consider just that part of the property.

Mr. Rosenberg encouraged the other PC members to consider the site as a whole, similar to how AC worked with Greenwood Village on the Cherry Creek Presbyterian Church project.

Mr. Weiss opened the hearing for public comment.

Fourteen members of the public from Hughes Mountain View, Alton Park, Villas at Sky Mark, and Mountain View Gardens spoke in opposition to the project. The neighbors cited the Four Square Mile Subarea Plan, which did not support more than 25 dwelling units/acre in density. They also expressed concerns about becoming like Denver or Cherry Creek North, traffic safety, limited access to the property (South Ulster is right-in/right-out only), impacts on E Florida Ave and S Quebec Way, appropriateness of more apartment development, safety of crossing S Parker Road to get to the nearby transit stops, setting a precedent for taller buildings/higher density, and visual impacts.

Mark Lampert, representing the Four Square Mile neighbors, noted that Four Square Mile organized and created a plan to prevent this type of high density development. He asked the PC to follow the Four Square Mile Subarea Plan and recommend denial.

Two residents of Villas at Sky Mark testified they did not oppose the application. The Villas at Sky Mark HOA president asked the PC to approve the project, explaining the proposal had less visual impact than what could happen if they followed the approved Denver zoning.

The applicant reported the Colorado Department of Transportation and the local fire departments were okay with the project. He said they indicated the project was market-rate with no subsidized units. Further, he believed they had sufficiently addressed concerns about setting an adverse precedent and were willing to deed restrict the Denver property to limit building height to what's approved in

Arapahoe County.

Mr. Rosenberg stated the project was relevant and the applicant met the approval criteria and felt the project achieved the goals of the Comp Plan. He moved to recommend approval to the Board of County Commissioners (BOCC) based on:

- 1) meeting the conditions of LDC for PDP approval
- 2) applicant agreed to restrict development on the adjoining property in Denver
- 3) staff's recommended condition from staff report + additional staff conditions of approval as part of the alternate motion for conditional approval provided in the staff report

Mr. Hill stated AC was not conditioning what Denver could do; it was conditioning what the applicants had agreed to, and committed to do, with the property.

The motion failed due to lack of a second.

**The motion was then made by Ms. Rieck and duly seconded by Mr. Rader to recommend the case unfavorably to the BOCC.**

Ms. Chaffin stated she understood Mr. Rosenberg's position; however, she felt the high-density traffic issues and concerns had not been sufficiently addressed. She would consider a PDP in the future if the issues were adequately addressed.

Mr. Weiss stated he didn't understand how drivers negotiated Parker Road on a daily basis already. He reported taking an alternate route, five miles out of his way, to avoid Parker Road during rush hour. He said he used to live in the area and recalls three fatal accidents in on both Florida and Parker Road. He felt CDOT was not addressing the current traffic situation sufficiently and could not support additional peak-hour traffic to this degree.

Mr. Sheldon noted the PC Comp Plan study session. He did not recall the outcome and discussion in the same way that was conveyed. The PC stated very specific concerns they wanted addressed with a Comp Plan application.

Mr. Rader stated the access, as designed, would result in cut-

	<p>through traffic.</p> <p>Mr. Weiss noted the Four Square Mile area residents had spent a great deal of time, a number of years ago, to come up with a plan. He stated the proposed project was not what was reflected in that plan.</p> <p><b>The vote was:</b></p> <p><b>Mr. Weiss, Yes; Mr. Rosenberg, No; Ms. Rieck, Yes; Ms. Chaffin, Yes; Mr. Rader, Yes, Mr. Sall, Yes; Mr. Brummel, Absent.</b></p>
<b>ADJOURNMENT</b>	<p>There being no further business to come before the Planning Commission, the meeting was adjourned.</p>

**DRAFT**

Proposed Amended Language

**SECTION 12-1800 MARIJUANA LAND USES**

**12-1800 INTENT**

To provide regulations pertaining to the commercial and non-commercial use of land, buildings and structures for the purpose of growing, selling, producing, distributing, manufacturing, and consuming marijuana and marijuana products.

**12-1801 DEFINITIONS**

For purposes of this Section 12-1800, the following definitions apply:

A. **CMMC** shall mean the Colorado Medical Marijuana Code, C.R.S. Section 12-43.3-101 *et seq.*

B. **Commercial** shall mean for purposes of obtaining a profit or remuneration.

C. **CRMC** shall mean the Colorado Retail Marijuana Code, C.R.S. Section 12-43.4-101 *et seq.*

D. **Dwelling unit** shall mean any house, apartment unit, condominium unit or other similar secure structure or unit thereof that is primarily used as a residence.

E. **Marijuana** shall mean all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. Marijuana shall not mean industrial hemp. Marijuana includes marijuana as defined in Article XVIII, Section 16 of the Colorado Constitution, the CRMC, Article XVIII, Section 14 of the Colorado Constitution, and the CMMC.

F. **Marijuana club** shall mean the use of any building, structure or other premises, whether such use is the primary use or an ancillary use, for purposes of allowing persons to consume marijuana or marijuana products, wherein such use is open to the public, or wherein the persons consuming marijuana or marijuana products directly or indirectly pay a fee or charge to compensate in any way for the ability to consume or use marijuana or marijuana products on the premises, including, but not limited to, paying a fee or charge to belong to a club or organization that has or provides access to the premises (examples of a “fee or charge” include, but are not limited to: a membership fee, an entrance fee, a cover charge, a rental fee, a food or beverage charge, etc.); except that the definition of a marijuana club shall not include the rental of a dwelling unit wherein marijuana or marijuana products are being used by the legal occupants of such premises, or their invitees where such invitees are not paying a fee, or other charge or remuneration.

G. ***Marijuana-infused product*** shall mean a product infused with marijuana that is intended for use or consumption other than by smoking.

H. ***Marijuana products*** shall mean concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption other than by smoking, such as, but not limited to, edible products, ointments, and tinctures. Marijuana products include marijuana-infused products.

I. ***Medical marijuana*** shall mean marijuana that is grown, sold or otherwise used for a purpose authorized by Article XVIII, Section 14 of the Colorado Constitution or the CMMC.

J. ***Medical marijuana center*** shall mean a person or entity that sells medical marijuana to patients or primary caregivers, but is not a primary caregiver.

K. ***Non-commercial*** shall mean not for the purpose of obtaining a profit or remuneration.

L. ***Patient*** has the meaning set forth in Colorado Constitution Article XVIII, Section 14(1)(d).

M. ***Person*** shall mean a natural person twenty-one years of age or older.

N. ***Plants*** shall mean marijuana plants, seedlings or any part thereof in a living condition that are lawfully grown or otherwise used for a purpose authorized by Article XVIII, Section 16 of the Colorado Constitution, the CRMC, Article XVIII, Section 14 of the Colorado Constitution, or the CMMC.

O. ***Primary caregiver*** has the meaning set forth in Article XVIII, Section 14(1)(f) of the Colorado Constitution.

## **12-1802 GENERAL: MARIJUANA LAND USES NOT ALLOWED**

The use of land, buildings or structures to grow, produce, cultivate, sell, dispense, distribute, store, test or manufacture marijuana and/or marijuana products, or as a marijuana club, is not allowed or permitted throughout unincorporated Arapahoe County, except to the extent specifically identified in Section 12-1803.

## **12-1803 EXCEPTIONS**

### **12-1803.01 Non-Conforming Commercial Uses**

An exception to the prohibition of marijuana land uses is the use of any land, building or structure for a medical marijuana center where such use commenced prior to December 15, 2009, so long as, and to the extent that, the property owner or other operator can establish that such use was and is in compliance with all of the terms and conditions of Chapter 11 of the Land Development Code (Nonconformities) and all applicable building and fire codes, and so long as such use is in compliance with Article XVIII, Section 14 of the Colorado Constitution and the CMMC, any rules or regulations adopted by the Colorado Department of Revenue, and all other applicable state and local laws and regulations. Notwithstanding anything in this sub-section or

in Chapter 11 of the Land Development Code to the contrary, in no event shall a medical marijuana center, a medical marijuana-infused products manufacturer, an optional premises cultivation operation or any other commercial marijuana land use be allowed in a residential zone district, in the residential portion of a planned unit development or within a dwelling unit in any other zone district.

### **12-1803.02 Non-Commercial Uses**

An exception to the prohibition of marijuana land uses is the non-commercial growing, cultivation, storage or production of marijuana or marijuana products, by a person, patient or his or her primary caregiver, to the extent that such activity is specifically authorized as a lawful personal use pursuant to Article XVIII, Section 16 of the Colorado Constitution, or is specifically exempt from criminal prosecution under Article XVIII, Section 14 of the Colorado Constitution, is in compliance with all applicable state and local statutes, rules and regulations and with all applicable building and fire codes, and subject to the following:

#### **12-1803.02.01 Dwelling Units**

The non-commercial growing, cultivation, storage or production of marijuana or marijuana products may only be conducted as a non-primary use in a residential (R-1, R-2, R-3, R-3S, R-4, R-5, R-P, R-PSF, R-PM, R-PH, SH and R-M), rural residential (A-2, R-A, R-E), or agricultural (A-1, AE) zone district, or in the residential portion of a planned unit development, and may only be conducted within a dwelling unit (and not on a porch or within a shed, greenhouse or other such structure) by a person residing at the dwelling unit, for such person’s own use, or by a primary caregiver on behalf of a patient who resides at the same dwelling unit as the primary caregiver; however, in no event shall more than six (6) plants, with three (3) or fewer being mature flowering plants, be grown or cultivated at any one time by each person or primary caregiver residing at such dwelling unit, up to a maximum of twelve (12) plants total per dwelling unit.

#### **12-1803.04 Additional Restrictions**

The marijuana land uses authorized by sub-section 12-1803.02 are subject to the following additional restrictions:

- A. All uses shall be conducted in an enclosed and secure area within a dwelling unit and shall not be visible to the public.
- B. All such uses shall not cause odors, smoke, heat, glare or light that is detectable to a person of normal senses beyond the property line of the property upon which the use is being conducted, or in an adjacent dwelling unit or public area.
- C. Signage or other advertising on the premises of marijuana use that is visible to the public is not allowed.

### **12-1804 APPLICATION TO EXISTING USES**

Notwithstanding any provisions of Chapter 11 of the Land Development Code (Nonconformities), all marijuana land uses are subject to all restrictions contained within this Section 12-1800, including those uses that were in existence prior to the adoption of this Section

12-1800, including any amendments thereto, except, and to the extent, that state or federal law requires that the marijuana land uses be exempt from such restrictions.

DRAFT

**DRAFT**

**Proposed Amended Language**

**SECTION 12-1800 ~~MEDICAL~~ MARIJUANA LAND USES**

**12-1800 INTENT**

—     To provide regulations pertaining to the commercial and non-commercial use of land, buildings and structures for the purpose of growing, selling, producing, distributing ~~and,~~ manufacturing ~~medical, and consuming~~ marijuana and marijuana ~~infused~~ products.

**12-1801 DEFINITIONS**

For purposes of this Section 12-1800, the following definitions apply:

~~A. —~~ ~~A. —~~ **CMMC** ~~means~~shall mean the Colorado Medical Marijuana Code, C.R.S. Section 12-43.3-101, *et seq.*

~~B. —~~ ~~B. —~~ **Commercial** shall mean for purposes of obtaining a profit or remuneration.

~~C. —~~ ~~CRMC~~ shall mean the Colorado Retail Marijuana Code, C.R.S. Section 12-43.4-101 *et seq.*

~~D. —~~ ~~Dwelling Unit~~ **Dwelling Unit** shall mean any house, apartment unit, condominium unit or other similar secure structure or unit thereof that is primarily used as a residence.

~~C. —~~ ~~Marijuana~~ shall mean the seeds, leaves, buds, and flowers of the plant (genus) cannabis, and any mixture, preparation or derivative thereof.

~~E. —~~ ~~D. —~~ **Marijuana** shall mean all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. Marijuana shall not mean industrial hemp. Marijuana includes marijuana as defined in Article XVIII, Section 16 of the Colorado Constitution, the CRMC, Article XVIII, Section 14 of the Colorado Constitution, and the CMMC.

~~F. —~~ ~~Marijuana club~~ **Marijuana club** shall mean the use of any building, structure or other premises, whether such use is the primary use or an ancillary use, for purposes of allowing persons to consume marijuana or marijuana products, wherein such use is open to the public, or wherein the persons consuming marijuana or marijuana products directly or indirectly pay a fee or charge to compensate in any way for the ability to consume or use marijuana or marijuana products on the premises, including, but not limited to, paying a fee or charge to belong to a club or organization that has or provides access to the premises (examples of a “fee or charge” include, but are not limited to: a membership fee, an entrance fee, a cover charge, a rental fee, a food or beverage charge, etc.); except that the definition of a marijuana club shall not include the rental of a dwelling unit wherein marijuana or marijuana products are being used by the legal occupants of

such premises, or their invitees where such invitees are not paying a fee, or other charge or remuneration.

**G. *Marijuana-infused product*** shall mean a product infused with marijuana that is intended for use or consumption other than by smoking.

~~H. ——— E.— *Marijuana products* shall mean concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption other than by smoking, such as, but not limited to, edible products, ointments, and tinctures. Marijuana products include marijuana-infused products.~~

**I. *Medical marijuana*** shall mean marijuana that is grown, sold or otherwise used for a purpose authorized by ~~Colorado Constitution~~ Article XVIII, Section 14 of the Colorado Constitution or the CMMC.

~~——— F.~~

**J. *Medical marijuana center*** ~~means~~shall mean a person or entity that sells medical marijuana to ~~registered~~ patients or primary caregivers, but is not a primary caregiver.

~~——— G. *Medical marijuana-infused products manufacturer* means a person or entity that manufactures marijuana-infused products.~~

**K. ——— H. *Non-commercial*** ~~means~~shall mean not for the purpose of obtaining a profit or remuneration.

~~——— I. *Optional premises cultivation operation* means a person or entity that grows or cultivates marijuana for a medical marijuana center or a medical marijuana-infused products manufacturer at a contiguous or non-contiguous location.~~

**L. ——— J. *Patient*** has the meaning set forth in Colorado Constitution Article XVIII, Section 14(1)(~~ed~~).

**M. ——— K. *Person*** shall mean a natural person twenty-one years or age or older.

**N. *Plants*** shall ~~have the same meaning as applied to the word "mean marijuana plants", seedlings or any part thereof in a living condition that are lawfully grown or otherwise used for a purpose authorized by Article XVIII, Section 16 of the Colorado Constitution, the CRMC, Article XVIII, Section 14(4)(e).~~ of the Colorado Constitution, or the CMMC.

**O. ——— L. *Primary caregiver*** has the meaning set forth in ~~Colorado Constitution~~ Article XVIII, Section 14(1)(~~f~~.) of the Colorado Constitution.

## 12-1802 GENERAL: MARIJUANA LAND USES NOT ALLOWED

~~———~~ The use of land, buildings or structures to grow, produce, cultivate, sell, dispense, distribute, store, test or manufacture marijuana and/or marijuana-~~infused~~ products, or as a

marijuana club, is not allowed or permitted throughout unincorporated Arapahoe County, except to the extent specifically identified in Section 12-1803.

## **12-1803 EXCEPTIONS**

### **12-1803.01 Non-Conforming Commercial Uses**

—————An exception to the prohibition of marijuana land uses is the use of any land, building or structure by for a medical marijuana center, ~~a medical marijuana-infused products manufacturer or an optional premises cultivation operation, that where such use~~ commenced prior to December 15, 2009, so long as, and to the extent that, the property owner or other operator can establish that such use was and is in compliance with all of the terms and conditions of Chapter 11 of the Land Development Code (Nonconformities) and all applicable building and fire codes, and so long as such use is in compliance with Article XVIII, Section 14 of the Colorado Constitution and the CMMC ~~and~~, any rules or regulations adopted by the Colorado Department of Revenue, and all other applicable state and local laws and regulations. Notwithstanding anything in this sub-section or in Chapter 11 of the Land Development Code to the contrary, in no event shall a medical marijuana center, a medical marijuana-infused products manufacturer, an optional premises cultivation operation or any other commercial marijuana land use be allowed in a residential zone district, in the residential portion of a planned unit development or within a dwelling unit in any other zone district.

### **12-1803.02 Non-Commercial Uses**

—————An exception to the prohibition of marijuana land uses is the non-commercial growing, cultivation, storage or production of ~~medical~~ marijuana or marijuana-infused products, by a registered person, patient or his or her ~~registered~~ primary caregiver, to the extent that such activity is specifically authorized as a lawful personal use pursuant to Article XVIII, Section 16 of the Colorado Constitution, or is specifically exempt from criminal prosecution under Article XVIII, Section 14 of the Colorado Constitution, is in compliance with all applicable state and local statutes, rules and regulations and with all applicable building and fire codes, and ~~is conducted in compliance with~~ subject to the following ~~use restrictions~~:

#### **12-1803.02.01 Residential Zone Districts Dwelling Units**

—————The non-commercial growing, cultivation, storage or production of ~~medical~~ marijuana or marijuana-infused products may only be conducted as a non-primary use in a residential (R-1, R-2, R-3, R-3S, R-4, R-5, R-P, R-PSF, R-PM, R-PH, SH and R-M), rural residential (A-2, R-A, R-E), or agricultural (A-1, AE) zone district, or in the residential portion of a planned unit development, ~~but and may only so long as it is~~ be conducted within a dwelling unit (and not on a porch or within a shed, greenhouse or other such structure) by a ~~registered patient~~ person residing at the dwelling unit, for such ~~patient’s personal~~ person’s own use, or by a ~~registered~~ primary caregiver on behalf of a ~~registered~~ patient who resides at the same dwelling unit as the primary caregiver; however, in no event shall more than six (6) plants ~~per registered patient, with three (3) or fewer being mature flowering plants,~~ be grown or cultivated at any one time by each person or primary caregiver residing at such dwelling unit, up to a maximum of twelve (12) plants total, ~~in a residential dwelling unit.~~

#### **12-1803.02.02 Other Zone Districts**

~~The non-commercial growing, cultivation, storage or production of medical marijuana or marijuana-infused products may also be conducted by both registered patients and their registered primary caregivers in the B-4, B-5, I-1, I-2, A-1 and A-E zone districts, or in the commercial or industrial portion of any planned unit development where such use has been specifically approved in a final development plan, and no others; however, with the exception of the growing or cultivation of 12 or fewer plants, or the storage of 4 ounces or less of medical marijuana, the uses authorized in this sub-section shall not be conducted within 1,000 feet of any church, school, residential zone district, per dwelling unit, public park or licensed child care center. Except as otherwise indicated herein, the limitation on the number of plants set forth in subsection 12-1803.02.01 shall not apply to the growing or cultivation of medical marijuana authorized by this sub-section; however, patients and primary caregivers must still comply with all limitations established by state law and regulations.~~

#### **~~12-1803.02.02.01 Method of Measuring Distances~~**

~~For purposes of sub-section 12-1803.02.02, the distance between one of the allowed uses set forth in that sub-section and any church, school, residential zone district, dwelling unit, public park or licensed child care center, shall be measured in a straight line, without regard to intervening structures or objects, from the nearest property line of the property on which the allowed use is being conducted to the nearest property line of the premises of a church, school, dwelling unit (single or multiple) or child care center, or the nearest boundary of an affected public park or residential zoning district. Notwithstanding the foregoing, for purposes only of measuring the distance between an allowed use and a dwelling unit, where the allowed use is being conducted in a dwelling unit or other structure within an A-1 or A-E zone district, the distance shall be calculated by measuring the distance between the nearest portion of the dwelling unit or other structure where the use is being conducted and the nearest portion of a dwelling unit other than the dwelling unit where the use is being conducted.~~

#### **~~12-1803.02.03 12-1803.04 Additional Restrictions~~**

~~The medical marijuana land uses authorized by sub-section 12-1803.02 are subject to the following additional restrictions:~~

~~A. All such uses shall be conducted in an enclosed and secure ~~structure or an~~ area within a structured dwelling unit and shall not be visible to the public.~~

~~B. All such uses shall not cause odors, smoke, heat, glare or light that is detectable to a person of normal senses beyond the property line of the property upon which the use is being conducted, or in an adjacent dwelling unit or public area.~~

~~C. Signage or other advertising on the premises of ~~the medical~~ marijuana use that is visible to the public is not allowed.~~

#### **~~12-1803.02.04 Application to Existing Uses~~**

#### **~~12-1804 APPLICATION TO EXISTING USES~~**

~~Notwithstanding any provisions of Chapter 11 of the Land Development Code (Nonconformities), all medical marijuana land uses ~~authorized by Section 12-1803.02~~ are subject~~

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to all restrictions contained within ~~that section or its subsections~~this Section 12-1800, including those uses that were in existence prior to the adoption of this ~~Section 12-1803.02 or its subsections~~1800, including any amendments thereto, except, and to the extent, that state or federal law requires that the ~~medical~~-marijuana land uses be exempt from such restrictions.

DRAFT