



**AGENDA
HAYDEN PLANNING COMMISSION**

**THURSDAY, APRIL 23, 2015
7:00 P.M.**

HAYDEN TOWN HALL – 178 WEST JEFFERSON AVENUE

REGULAR MEETING

- 1. CALL TO ORDER, MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE**
- 2. ROLL CALL**
- 3. CONSIDERATION OF MINUTES**
 - a. Decision: April 9, 2015
- 4. PUBLIC COMMENTS**
- 5. OLD BUSINESS**
 - a. Discussion: Marijuana Grow Facilities
- 6. NEW BUSINESS**
 - a. Decision: M and J Storage Site Plan review.
- 7. STAFF AND COMMISSION MEMBER REPORTS**
- 8. ADJOURNMENT**

NOTICE: Agenda is subject to change. If you require special assistance in order to attend any of the Town's public meetings or events, please notify the Town of Hayden at (970) 276-3741 at least 48 hours in advance of the scheduled event so the necessary arrangements can be made.



TOWN OF HAYDEN

Planning Commission

Memo

Project: Marijuana Regulations

Prepared by: David Torgler, Town Manager
Greg Thompson, Hayden Planning Consultant

Date of Meeting: April 23, 2015

Process: The creation of new regulations is a legislative action. Comments can be received by the Planning Commission throughout the process.

Background

Last month, a property owner requested the Town consider adopting regulations that would allow for the growing and cultivation of marijuana as a commercial endeavor. An initial meeting with the Planning Commission was held where the community heard some basic background information on the topic, asked questions and discussed the idea. Community members were also invited to offer their thoughts as well.

Attached, please find an ordinance designed to allow for the use in the Light Industrial zone as a conditional use. At the meeting, there will be additional opportunity to discuss the idea as well as the specifics of the ordinance itself.

ORDINANCE NO. 666

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF HAYDEN,
COLORADO, ADDRESSING PORTIONS OF ARTICLE 3, OF TITLE 16 OF
THE HAYDEN MUNICIPAL CODE REGARDING MEDICAL AND
RECREATIONAL MARIJUANA CULTIVATION RESTRICTIONS; AND TITLE
8 HEALTH AND SAFETY ARTICLE 8.XX ODOR

RECITALS

1. Enactment of Amendment 64 (Article XVII) Section 16 of the Colorado Constitution, allows for the cultivation of recreational marijuana.
2. The legalization of the cultivation of both medical and recreational marijuana has brought about increased concerns regarding such cultivations' compliance with all applicable laws and health and safety concerns resulting from the use of pesticides, fertilizers, butane and carbon dioxide and increased risks of airborne molds, fire and electrocution. Cultivation of marijuana presents significant health, safety and nuisance issues that negatively impact neighbors, employees, property owners and public safety volunteers and employees usually resulting from violations(s) of local building, fire, ventilating and environmental regulations.
3. To address such concerns, Council desires to update its regulations, regarding the cultivation of medical and recreational marijuana.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, THAT:

Section 1. Title 8.35 Prohibition of Marijuana Establishments, Section 8.35.010 Findings and Legislative Intent E. shall be amended to read as follows:

E. The Town Council therefore finds and determines that as a matter of the Town's local land use and zoning authority, and consistent with authorization provided by Article XVIII, Section 16 of the Constitution, that no suitable location exists within the corporate limits of the Town for the manufacture and sale of marijuana by the operation of or through marijuana establishments, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores.

Section 2. Title Prohibition of Marijuana Establishments, Section 8.35.040 Marijuana Establishments, Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities or Retail Marijuana Stores Prohibited shall be amended to read as follows:

It is unlawful for any person or entity to operate, cause to be operated or permit to be issued to operate a marijuana establishment, marijuana product manufacturing facility, marijuana testing facility or retail marijuana store which license could otherwise be obtained with the

Town and all such uses and operations are hereby prohibited in any location within the Town or within any area annexed to the Town.

Section 3. Portions of Article 3 of Title 16 of the Hayden Municipal Code are enacted and provide for Marijuana Cultivation Restrictions to provide as follows:

ARTICLE X - MARIJUANA CULTIVATION RESTRICTIONS

DIVISION 1 RESIDENTIAL CULTIVATION RESTRICTIONS.

Section XXX-1. Legislative powers.

The Town Council hereby finds and declares that it has the power to enact this chapter and the regulations herein pursuant to Article XVIII of Section 14, and Section 16, of the Colorado Constitution, Article XX, Section 6 of the Colorado Constitution, the Colorado Medical Marijuana Program (C.R.S. §25-1.5-106), Article 15 of Title 31, C.R.S. (“exercise of municipal powers”), and the Town’s Home Rule Charter and code.

Section XXX-2. Relationship to Colorado Retail Marijuana Code; other laws.

Except as otherwise specifically provided herein, this Article incorporates the requirements and procedures set forth in the Colorado Retail Marijuana Code. In the event of any conflict between the provisions of this Article and the provisions of the Colorado Retail Marijuana Code or any other applicable state or local law, the more restrictive provision shall control.

Section XXX-3. Unlawful Acts.

It shall be unlawful for any person to operate any commercial marijuana cultivation establishment in the Town without a license duly issued therefor under this Article.

Section XXX-4 Defined terms.

The definitions set forth in subsection 16 (2) of article XVIII of the Colorado Constitution as well as the Colorado Retail Marijuana Code 12-43.4-103, C.R.S., as amended, shall apply to this article.

Cooperative Grow Operations are limited to twelve (12) plants. Any more is classified as a commercial grow operation and subject to those requirements.

Retail Marijuana Cultivation means the cultivation of marijuana in accordance with the Colorado Retail Marijuana Code. This definition shall not apply to the cultivation of medical marijuana by a patient for the patient’s personal use. Nor shall this definition apply to the cultivation of medical marijuana by a caregiver registered with the Department of Public Health pursuant to CRS 25-1.5-106 or the distribution of medical marijuana by such a caregiver to the caregiver’s patients.

(1) Use criteria:

- a. Retail marijuana cultivation uses shall not be located within 1,000 feet of any public or parochial school or the principal campus of any college, university, or seminary; any public park; or any child care facility. Distances described in this paragraph shall be calculated by measuring the distance from the nearest property line of the school, park or

child care facility to the building in which the medical marijuana center is located. License applications shall include an area map drawn to scale indicating land uses of other properties within a 1,000-foot radius of the property upon which the applicant is seeking a license. The map shall depict the proximity to the property to any school or child care establishment; to any other retail marijuana store; or to any medical marijuana center.

- b. Retail marijuana cultivation uses shall operate from a permanent and fixed location. No retail marijuana cultivation use shall operate from a vehicle or other moveable location.
- c. Retail marijuana cultivation uses shall not display signs visible from the exterior of the premises that depict any portion of the marijuana plant.
- d. Retail marijuana cultivation uses shall not operate in a manner that adversely affects the public health, safety, and welfare of the immediate neighborhood in which the retail marijuana cultivation use is located.

(2) Retail marijuana cultivation uses shall not operate as home occupations.

Section XXX-5. Residential Cultivation regulations/legislative.

(a) The cultivation, production or possession of marijuana plants for medical use by a patient or primary caregiver, as such terms are defined by Article XVIII, Section 14 of the Colorado Constitution, and the Medical Marijuana Program, C.R.S. § 25-1.5-106, shall be allowed in residential structures subject to the requirements set forth in this article.

(1) The cultivation, production, or possession of medical marijuana plants must be in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, and the Medical Marijuana Program, C.R.S. § 25-1.5-106, including its regulations set forth in 5 CCR 1006-2; and

(2) Any primary caregiver acting as a home occupation shall conduct such business in accordance with the home occupation requirements set forth in the Town's zoning regulations.

(b) The cultivation, production or possession of marijuana plants for personal use by persons twenty-one years of age or older, as such terms are defined by Article XVIII of Section 16 of the Colorado Constitution shall be allowed in residential structures subject to full compliance with the applicable provisions of Article XVIII of Section 16 of the Colorado Constitution and the requirements set forth in this article.

Section XXX-6. Residential Cultivation operational regulations.

(a) In addition to the requirements set forth herein in section XXX of this article, the cultivation, production or possession of marijuana for medical use by a patient, or primary caregiver, or for recreational use by any person twenty-one years of age or older shall be subject to the following conditions.

(1) The marijuana plants must be cultivated, produced, processed and possessed within a person's primary residence, as defined in paragraph (b) herein; and

(2) The cultivation, production, processing and possession of marijuana plants must not be conducted in an open and public manner meaning it must not be perceptible from the exterior of the primary residence, and such activity shall not cause or create any of the following:

a. Regularly occurring or persistent unusual odors, smells, fragrances, or other olfactory stimulus detectable by any person with a normal sense of smell upon or within any adjacent unit or property;

b. Light pollution, glare, or brightness that unreasonably disturbs others in the use or enjoyment of their property, or constitutes a nuisance; or

c. Excessive noise.

(3) Marijuana plants shall not be cultivated, produced, processed or possessed in the common areas of a multi-family or attached residential development; and

(4) The cultivation, production, processing or possession of marijuana plants shall be limited to the following space limitations within a primary residence as follows:

a. For a single-family dwelling unit (Group R-3 as defined by the most current international building code adopted by the Town), within a single enclosed locked, defined, contiguous area containing no more than twelve (12) plants within such person's primary residence;

b. For a multi-family dwelling unit (Group R-2 as defined by the most current international building code, adopted by the Town), within a single enclosed locked, defined, contiguous area containing no more than twelve (12) plants within such person's primary residence.

(5) The cultivation, production, processing or possession of marijuana plants shall meet the requirements of all adopted Town building and life/safety codes; and

(6) The use of any compressed flammable gas as a solvent in the extraction of tetrahydrocannabinols or other cannabinoids in a residential setting is prohibited; and

(7) The total load for a single branch circuit shall not exceed the ampacity for the entire cultivation area within a dwelling.

(b) For purposes of this section, "primary residence" means the place that a person, by custom and practice, makes his or her principal domicile and address, and to which the person intends to return following any temporary absence, such as a vacation. Residence is evidenced by actual daily physical presence, use, and occupancy of the primary residence, and the use of the residential address for domestic purposes, such as, but not limited to, sleep, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration, or credit, water and utility billing. A person shall have only one primary residence. A primary residence shall not include accessory buildings.

(c) For purposes of this section, "enclosed locked" area means a location within the primary residence accessible only to the person growing the marijuana through one or more doors secured by a locking mechanism designed to limit access such as with a key or combination lock, and with walls and roofing that must be constructed of solid materials. Such premises must remain secure at all times and any windows must be locked to prevent access by children, visitors or a casual passersby.

DIVISION 2 COMMERCIAL CULTIVATION RESTRICTIONS.

Section XXX-7.

Legislative intent.

- (a) Town Council hereby finds and declares that the proliferation of large-scale, non-licensed, and unregulated marijuana cultivation operations poses a significant threat to the health, safety, and security of all citizens of the town. The Town Council finds that such operations can result in increased violations of criminal laws along with violations of building, electrical, and fire codes in these large cultivation operations. It is, therefore, the intent of the Town Council to place reasonable and necessary restrictions upon such cultivations.

Section XXX-8. Lot Cultivation Restrictions.

(a) It shall be unlawful for any person, alone or in concert with other persons, to possess or cultivate more than twelve (12) marijuana plants on any lot in the town without approval of a Conditional Use Permit.

(b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any lot to allow more than twelve (12) marijuana plants to be possessed or cultivated on the lot without approval of a Conditional Use Permit.

(c) It shall be unlawful for any person, alone or in concert with other persons, to cultivate marijuana outside of a completely enclosed locked structure.

(1) Nothing in this section shall be construed to allow the cultivation of marijuana in any number, manner, or location that is in conflict with the cultivation restrictions imposed in this article within single family and multi-family residential dwelling units.

(2) For purposes of this section:

- a. "Completely enclosed locked structure" means a structure as defined by the zoning code accessible only to the persons cultivating the marijuana through one or more doors secured by a locking mechanism designed to limit access such as with a key or combination lock, and with walls and roofing that must be constructed of solid materials. Such structure must remain secure at all times and any windows must be locked to prevent access children, visitors or a casual passerby.
- b. "Cultivate" means the planting, growing, harvesting, storing, drying, trimming, or processing of marijuana plants.
- c. "Marijuana plant" means all parts of the plant of the genus cannabis, whether growing or not, including but not limited to immature and mature plants, and any seeds, leaves, stalks, and flowers, without regard for cannabinoid concentration levels.
- d. Section 16.03.030.I.3 of the Hayden Municipal Code shall be amended to include the addition of a new conditional use, cc. Marijuana Cultivation.
- e. Section 16.03.030.J.3 of the Hayden Municipal Code shall be amended to include the addition of a new conditional use, z. Marijuana Cultivation.

Section XXX-9. Control of Emissions.

In accordance with Town of Hayden Code Title 8. Health and Safety Section XX. Odor, sufficient measures and means of preventing smoke, odors, debris, dust, fluids, and other substances from exiting a retail marijuana establishment must be provided at all times. In the event that any odors, debris, dust fluids or other substances exit a retail marijuana establishment, the owner of the subject premises and the

licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state, and local laws and regulations.

Section XXX-10. Class of licensing authorized.

For the purpose of regulating the cultivation of marijuana, the local licensing authority, upon application in the prescribed form made to the Town Clerk, may issue and grant to the applicant a local license from the following class, and the Town hereby authorizes issuance of the license of the following class by the state licensing authority in locations in the Town, subject to the provisions and restrictions provided in this Article:

1. Retail marijuana cultivation facility.

Section 4. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The Town Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 5. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 6. The repeal or modification of any provision of the Municipal Code of the Town of Hayden by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 7. This ordinance is deemed necessary for the preservation of the public property, health, welfare, peace and safety.

Section 8. Violations of this ordinance shall be punishable in accordance with the provisions of the Hayden Municipal Code.

Section 9. EFFECTIVE DATE.

This Ordinance, immediately on final passing and adoption, shall be published by the Town Clerk in accordance with Section 3-3h of the Home Rule Charter and recorded in the Town Book of Ordinances kept for that purpose, authenticated by the signatures of the Mayor and Town Clerk. This Ordinance shall be in force and take effect fifteen (15) days after second publication in accordance with Section 3-3h of the Hayden Home Rule Charter.

Section 10. PUBLIC HEARING.

A public hearing on this Ordinance will be held on the ____ day of _____ 2015, at or about 7:30 p.m. at the Hayden Town Hall, 178 West Jefferson Ave, Hayden, Colorado.

INTRODUCED, READ, AND ORDERED PUBLISHED PURSUANT TO SECTION 3-3 (d) OF THE HAYDEN HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF HAYDEN, ON THE ____ DAY OF _____ 2015.

James M. Haskins, Mayor

ATTEST

Sharon Johnson, Town Clerk

FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED PURSUANT TO SECTION 3-3 (h) OF THE HAYDEN HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF HAYDEN, ON THE ____ DAY OF _____ 2015.

James M. Haskins, Mayor Pro-Tem

ATTEST

Sharon Johnson, Town Clerk



Town of Hayden
Planning Commission
Staff Report

Project: Site Plan Review for M and J Storage
Address: 100 W. Iron Horse Road
Applicant: Horst Rick
Prepared by: Greg Thompson, AICP Hayden Consulting Planner
Hearing Date: April 23, 2015

Process: The requirements for the review of a site plan are found in Chapter 16.04.100 of the Hayden Town Code. No notice requirements are listed for this application in this section or under section 16.01.170 "Public Hearing and general notice provisions."

The subject property and application shall follow the process which requires a meeting before the Planning Commission found in Chapter 16.04.100.B.9.

Background

The applicant is interested in obtaining approval for buildings 7 and 8 on his existing site at 100 W. Iron Horse Road, which is located in the I-1 (Light Industrial) zone. The site is currently used for buildings 1-6 and outdoor storage. The proposed buildings would mirror the look and style of the existing buildings. Each proposed building is 40' x 100' (4,000 sf) for a total of 8,000 sf additional space on the property. Outside storage currently exists on the north and west sides of the property.

Zoning and Land Use

The subject property is zoned I-1 – Light Industrial District. The adjacent land uses and zoning include:

- North: Undeveloped – County Property
- South: Railroad tracks; Mixture of uses – I-L (Light Industrial) and Commercial
- East: Undeveloped; small farms – County Property
- West: Single-family residential; undeveloped - I-L (Light Industrial)

Compliance with Review Criteria

Section 16.04.100.C lists the criteria used to evaluate site plans.

1. *All of the information required on a site plan is shown.*

Staff comment: For all practical purposes, the proposal meets this requirement. The applicants have provided a plan which shows the location of the buildings to be built and the existing buildings. They have provided a basic site plan.

The proposal complies with this criterion.

2. *The lot size and lot dimensions are consistent with what is shown on the approved final plat.*

Staff comment: This already partially developed property was created with a metes and bounds legal description. It does not appear to be a requirement of a site plan to have a property go through the platting process to have a site plan approved... particularly for an already developed site. The proposed site plan is similar in size and shape as what is shown on the Routt County Assessors site for this parcel at 4.4 acres.

The Town has recommended to the applicants they submit a subdivision plat to create the subject parcel through that process.

The proposal complies with this criterion.

3. *No buildings or structures infringe on any easements.*

Staff comment: To the best of staff's knowledge, there are no encroachments on any easements. Since this is an unplatted lot, there may be easements that are unknown that should be incorporated into any plat the applicant may do in the future.

The proposal complies with this criterion.

4. *The proposed site grading is consistent with the requirements of any applicable adopted storm drainage criteria or master drainage plans.*

Staff comment: Gary Welp, with RG and Associates, has reviewed the drainage for the site and worked with the applicants to revise the submitted information to comply with the intent of the Town's criteria. It does not appear a drainage plan which complies with current day standards was required on the first several phases on this site. In working with the applicant, Mr. Welp suggested a water quality pond would be an appropriate addition. The applicant will be using an existing drainage channel on the east side of the site with 2 "check dams" to provide water quality. The proposal complies with this criterion.

5. *The density and dimensions shown conform to the Town Zoning Code Density and Dimensional Standards or the approved PUD Overlay Zone requirements.*

Staff comment: The proposal meets the criteria listed for the I-1 (Light Industrial) zone district. Section 16.03.060 identifies the criteria for all zones. With a 4.4 acre parcel, there is plenty of room on the site to meet Code requirements. In all instances, this proposal meets the listed criteria.

The proposal complies with this criterion.

6. *The applicable provisions of the Code have been adequately addressed and the proposed improvements conform to this Code and the Comprehensive Plan.*

Staff comment: The applicants have diligently worked with the Town to provide information and amend their plans to bring the proposal into compliance.

The Comprehensive Plan lists policies for Business/Light Industrial uses. They include:

1. Good location that does not conflict with the existing Town, and
2. Good access to Airport, Rail and US 40.

As a mini-storage facility, having good access to airport, rail and US 40 is less important than other uses. With the exception of the parcel where "Iron Horse Road" is, this site is next to the rail line and is 2-3 blocks from US Highway 40. The proposed additional buildings to the existing, already developed site utilizes the existing light industrial property more efficiently. Surrounding property owners are already aware of this facility because 6 buildings devoted to storage units already exist. The additions proposed, and the location of the additions, should not negatively impact surrounding properties. Access to this site already comes from US 40 and is not proposed to change as part of this application.

From an outdoor storage standpoint, the Code indicates for the Light Industrial zone district, "Outdoor storage, equipment and refuse areas shall be concealed from view from abutting rights-of-way and from adjoining residential districts." No residential districts are adjacent to the subject property. Likewise, the property is not adjacent to any right-of-way. Therefore, the outdoor storage area does not require screening.

The existing Comprehensive Plan essentially ignores the subject property. No existing and future land uses are called for on the property. The next Plan needs to address this property as well as others on Iron Horse Road.

The proposal complies with this criterion.

Referral Agency and Department Comments

The proposal was referred to the following agencies:

Public Works
Water
Sewer
Town Clerk

Fire District
Building Inspections
Engineering

Comments received from these entities have been incorporated into the staff report or will need to be addressed by the applicant with future applications such as a building permit.

Public Input

No public notice is required for the site plan review application. Consequently, no comments or concerns have been received from the public about the proposed building additions.

Recommendation

Based on the above observations and findings of compliance with the Town Codes, staff recommends the Planning Commission make the following findings regarding the proposed addition of two buildings at the M and J storage facility:

1. All of the information required on a site plan is shown.
2. The lot size and lot dimensions are consistent with what is shown on the county assessor's site.
3. No buildings or structures infringe on any known easements.
4. The proposed site grading and water quality pond is consistent with the requirements of any applicable adopted storm drainage criteria or master drainage plans.
5. The density and dimensions shown conform to the Town Zoning Code Density and Dimensional Standards or the approved PUD Overlay Zone requirements.
6. The applicable provisions of the Code have been adequately addressed and the proposed improvements conform to this Code and the Comprehensive Plan.

And approve the proposed addition of two buildings as well as the outdoor storage locations as shown on the site plan.

Attachments

Vicinity Map
Site Plan
Building Elevations