

ORDINANCE NO. 3313
(ZOA-15-500436 – MEDICAL MARIJUANA ESTABLISHMENTS - UPDATE)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, TO AMEND TITLE 19 OF THE HENDERSON MUNICIPAL CODE BY AMENDING PORTIONS OF CHAPTERS 19.5 AND 19.6 TO MAKE VARIOUS CORRECTIONS, REVISIONS AND UPDATES AS NECESSARY, AND MATTERS PROPERLY RELATED THERETO.

WHEREAS, it is the intent of the City of Henderson to maintain an zoning ordinance for the safe and orderly development of property; and

WHEREAS, the City of Henderson adopted a new zoning ordinance on January 19, 2010; and

WHEREAS, a zoning ordinance is considered a "living document" and will invariably need amending to make minor corrections, revisions, and updates as necessary; and

NOW, THEREFORE, the City Council of the City of Henderson, Nevada, does ordain:

SECTION 1. Chapters 19.5 and 19.6 of the Henderson Development Code are hereby amended, as represented in Exhibit A, hereto attached consisting of eight (8) pages.

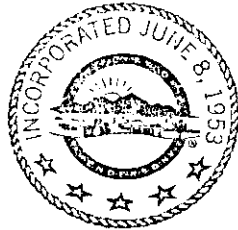
SECTION 2. If any section, subsection, sentence, clause, phrase, provision or portion of this Ordinance, or the application thereof to any person or circumstances, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or provisions of this Ordinance or their applicability to distinguishable situations or circumstances.

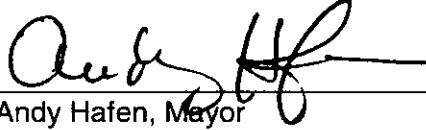
SECTION 3. All ordinances, or parts of ordinances, sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Henderson, Nevada, in conflict herewith are repealed and replaced as appropriate.

SECTION 4. A copy of this Ordinance shall be filed with the office of the City Clerk, and notice of such filing shall be published once by title in the Review Journal, a newspaper having general circulation in the City of Henderson, at least ten (10) days prior to the adoption of said Ordinance, and following approval shall be published by title (or in full if the Council by majority vote so orders) together with the names of the Councilmen voting for or against passage for at least one (1) publication before the Ordinance shall become effective. This Ordinance is scheduled for publication on December 4, 2015, in the Review Journal.

ZOA-15-500436 – MEDICAL MARIJUANA ESTABLISHMENTS - UPDATE

PASSED, ADOPTED, AND APPROVED THIS 1ST DAY OF DECEMBER, 2015.




Andy Hafen, Mayor

ATTEST:


Sabrina Mercadante, MMC, City Clerk

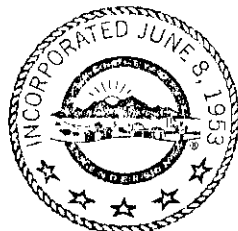
The above and foregoing Ordinance was first proposed and read in title to the City Council on November 17, 2015, which was a Regular Meeting, and referred to a Committee of the following Councilmen:

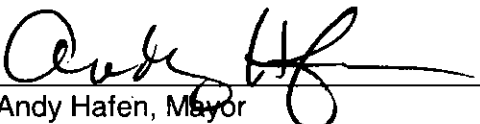
"COUNCIL AS A WHOLE"

Thereafter on December 1, 2015, said Committee reported favorably on the Ordinance and forwarded it to the Regular Meeting with a do-pass recommendation. At the Regular Meeting of the Henderson City Council held December 1, 2015, the Ordinance was read in title and adopted by the following roll call vote:

Those voting aye: Andy Hafen, Mayor
 Councilmembers:
 Sam Bateman
 Debra March
 John F. Marz
 Gerri Schroder

Those voting nay: None
Those abstaining: None
Those absent: None




Andy Hafen, Mayor

ATTEST:


Sabrina Mercadante, MMC, City Clerk

Exhibit A
Amendments to Chapters 19.5 and 19.6 of the Henderson Development Code

4. Medical Marijuana, Dispensary

RESIDENTIAL											PUBLIC	
RS-1	RS-2	RS-4	RS-6	RS-8	RM-10	RM-16	RH-24	RH-36	RMH	DH	PS	DP
COMMERCIAL					INDUSTRIAL				MIXED-USE			
CN	CO	CC	CH	CT	CA	IL	IG	IP	MC	MN	MR	
C	C	C	C			C	C	C				

(a) Definition

Means a business that is registered with the State of Nevada Division of Public and Behavioral Health of the Department of Health and Human Services pursuant to NRS 453A.322, as may be amended or renumbered; and acquires, possesses, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to the holder of a valid registry identification card.

(b) Standards

- (1) Shall comply with all H.M.C. Title 4 regulations.
- (2) Shall comply with the distance separation requirements of 19.5.5.Y
- (3) Shall have operating hours between the hours of 8:00 am and 8:00 pm.
- (4) Drive-through services are prohibited.
- (5) There shall be no emission of dust, fumes or vapors into the environment from the facility.
- (6) Shall be a minimum of 1,400 gross square feet.
- (7) Shall not provide outdoor seating.
- (8) There shall be no outdoor display of merchandise or merchandise visible from the outside of the establishment.
- (9) Shall be located in a permanent building, and shall not be located in a trailer, cargo/shipping container or motor vehicle.
- (10) There shall be no outdoor storage, including the use of cargo/shipping containers for on-site storage.
- (11) Windows must remain unobstructed, allowing visibility into the facility. Window tint, decals and signage of any kind shall be strictly prohibited.
- (12) Signs shall meet the following regulations:
 - i. Shall be limited to wall signs, monument or freestanding signs;
 - ii. Maximum sign area shall be 25 square feet;
 - iii. A maximum of 25% of the wall sign or tenant panel of a freestanding sign may include a logo;

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- iv. Wall signs shall be constructed only of pan channel letters (no cabinet or can signs);
 - v. Wall signs shall be internally illuminated. No exposed lighting sources are permitted;
 - vi. No animation or electronic message unit signs are permitted;
 - vii. Color and design, including lettering shall complement the architecture of the building;
 - viii. Signage shall be professional, and be consistent with the traditional style of signage for pharmacies and medical offices; and
 - ix. Sign regulations or master sign criteria shall apply in addition to the above regulations. The most restrictive regulations apply.
- (13) The conditional use permit shall lapse without further action if the use ceases for a period exceeding 90 days.
- (14) Approval of a conditional use permit does not guarantee approval of a business license.
- (c) Industrial Districts
- (1) Dispensaries may [only] be permitted in the same building in conjunction with a cultivation site under the same ownership or management.
 - (2) Stand-alone dispensaries shall only be permitted within buildings that contain multiple tenant spaces designed with retail/office storefronts, located on arterial roadways as designated by the Master Streets and Highways Plan.
- (d) Off-Street Parking Requirement
- One space per 250 square feet.
- (e) Off-Street Loading Group
- Group Two (Section 19.7.4.D.)

19.6.6. ENTITLEMENTS

A. CONDITIONAL USE PERMITS

4. Purpose/Description

The conditional use permit review and approval procedure provides a discretionary approval process for uses with unique or widely varying operating characteristics or unusual site development features. The procedure encourages public review and evaluation of a use's operating characteristics and site development features and is intended to ensure proposed conditional uses will not have a significant adverse impact on surrounding uses or on the community-at-large.

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5. **Application Filing**

Applications for conditional use permits shall be submitted to the Community Development and Services Director.

6. **Public Hearing Notice**

Notice of public hearings on conditional use permits shall be posted and mailed in accordance with Section 19.6.3.B.4, *Public Notice*.

7. **Community Development and Services Director Review and Report**

The Community Development and Services Director shall review each proposed conditional use permit application in light of the approval criteria of Section 19.6.6.A.7, *Conditional Use Permit Approval Criteria*, and, as deemed necessary, distribute the application to other reviewers. Based on the results of those reviews, the Community Development and Services Director shall provide a report to the Planning Commission.

For medical marijuana establishments, the Community Development and Services Director shall provide a report to the City Council.

8. **Planning Commission Review and Decision**

(a) Within 50 days of receipt of a complete application, the Planning Commission shall hold a public hearing on the proposed conditional use permit. At the close of the public hearing, the Planning Commission shall act to approve, approve with conditions, or deny the application, based on the approval criteria of Section 19.6.6.A.7, *Conditional Use Permit Approval Criteria*. However, the Planning Commission's vote shall be a recommendation only when the application is being processed concurrently with an application that requires a final decision by the City Council.

(b) Design review applications that are being processed concurrently with conditional use permits shall be reviewed and approved concurrently by the Planning Commission.

9. **City Council Review and Decision**

Within 50 days of receipt of a complete application, the City Council shall hold a public hearing on the proposed medical marijuana establishment conditional use permit. At the close of the public hearing, the City Council shall act to approve, approved with conditions, or deny the application based on the approval criteria for Section 19.6.6.A.7, *Conditional Use Permit Approval Criteria*.

10. **Conditional Use Permit Approval Criteria**

(a) **General Criteria**

Conditional use permits may be approved by the Planning Commission only if they find that all of the following criteria are met:

- (1) The proposed use complies with all applicable provisions of this Development Code unless otherwise expressly stated;
- (2) The proposed use is compatible with adjacent uses in terms of scale, site design, and operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);

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- (3) Any significant adverse impacts resulting from the use will be mitigated or offset to the maximum practical extent;
- (4) The proposed use will not cause substantial diminution in value of other property in the neighborhood in which it is to be located;
- (5) Public safety, transportation, and utility facilities and services will be available to serve the subject property while maintaining sufficient levels of service for existing development;
- (6) Adequate assurances of continuing maintenance have been provided; and
- (7) Any significant adverse impacts on the natural environment will be mitigated to the maximum practical extent.

(b) Liquor Licenses

Conditional use permits for liquor licenses may be approved by the Planning Commission only if they find that all of the "General" approval criteria of Section 19.6.6.A.7(a) and the following criteria have been met:

- (1) The proposed use, its site design and conditions applied thereto, are intended to result in a facility where littering, loitering, and outdoor disturbance or excessive noise are not likely to occur.
- (2) The proposed use will not adversely affect the welfare of the neighborhood residents because on-site consumption occurs in designated and properly designed areas indoors or outdoors and that, for package sales locations, adequate measures are proposed that on-site consumption is not likely to occur.
- (3) The proposed project, based upon its physical positioning on the site and its architectural and design features, is compatible with the surrounding neighborhood. Considerations to ensure compatibility may include, but are not limited to, an evaluation of security, noise, light and glare, parking location and availability, and service area locations.

(c) Medical Marijuana Establishments

- (1) Conditional use permit applications for Medical Marijuana establishments shall not require Planning Commission approval and will proceed directly for final action at City Council. Conditional use permits for Medical Marijuana establishment shall be heard in conjunction with a City of Henderson business license application on the same City Council meeting.
- (2) All Medical Marijuana Establishments require approval of a conditional use permit. Conditional use permits for medical marijuana establishments are only valid at a given location for the operator who obtains the Nevada State certificate for the facility. The conditional use permit approval shall expire and become null and void if the medical marijuana establishment operator loses or otherwise forfeits his or her State certificate to operate that facility. ~~[Conditional use permits for medical marijuana establishments are non-transferable between operators and locations within the City of Henderson.]~~
- (3) Conditional use permits for medical marijuana establishments may only be submitted to Community Development and Services in conjunction with an application to the City of Henderson Business License Department. A

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conditional use permit application is not deemed complete and will not be scheduled for a public hearing until the City of Henderson Business License application has been reviewed and approved in accordance with Business License medical marijuana establishment suitability criteria. Once deemed approved, a conditional use permit will be scheduled for a public hearing meeting.

- (4) Conditional use permits for medical marijuana establishments may be approved, only if they meet all of the "General" approval criteria of Section 19.6.6.A.7.(a) and the standards of 19.5.5.Y.

11. Findings of Fact

The decision of the Planning Commission shall be accompanied by written findings of fact specifying the reasons for the decision.

12. Notice of Decision

Within five days of the Planning Commission's decision on a conditional use permit, the Community Development and Services Director shall mail notice of the decision to the applicant and all other parties who have made a written request for notification.

FIGURE 19.6.6-A: SUMMARY OF THE CONDITIONAL USE PERMIT PROCESS

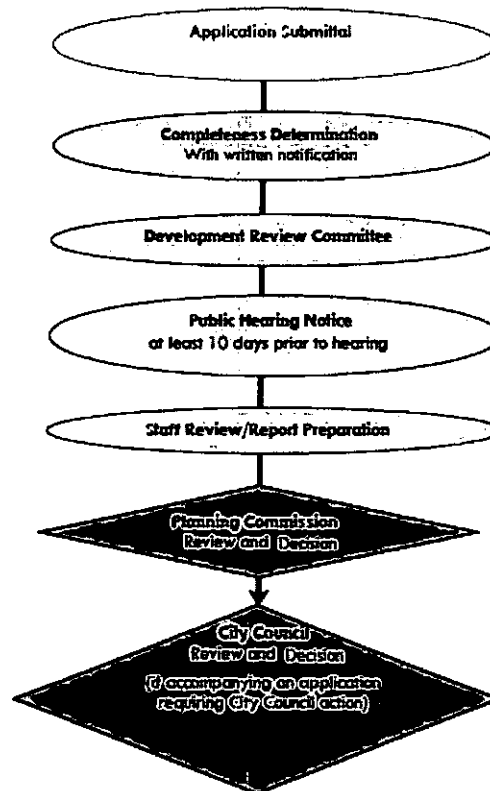
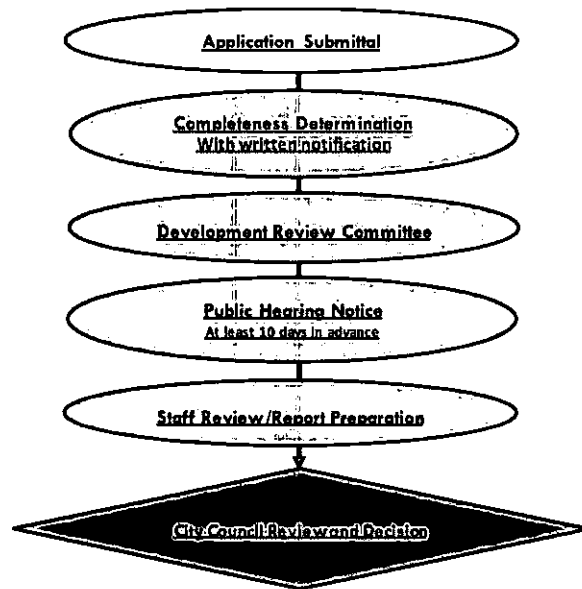


Figure 19.6.6-B Summary of a Conditional Use Permit – Medical Marijuana



13. Appeals

Appeals of the Planning Commission's decision on conditional use permits shall be taken to the City Council in accordance with the appeal procedures of Section 19.6.9.E, *Appeals*.

Appeals of the City Council decision on conditional use permits shall be processed through the court system.

14. Effective Date

Decisions of the Planning Commission on a conditional use permit shall become effective ten days after the date that the City Clerk received written notice of the Planning Commission's approval of the conditional use permit, unless a valid appeal is filed in accordance with Section 19.6.9.E, *Appeals*.

Decisions of the City Council on a conditional use permit shall become effective upon posting of the decision with the City Clerk's office, unless a valid appeal is filed in accordance with Section 19.6.9.E, *Appeals*.

15. Lapse of Approval

(a) Except as otherwise provided herein, a conditional use permit shall lapse and have no further effect one year after its effective date or at such alternate time specified in the approval unless one or more of the following criteria has been met:

- (1) A building permit other than a grading permit, has been issued and construction diligently pursued toward completion of the building.
- (2) A certificate of occupancy has been issued.
- (3) The use is established, and maintained.
- (4) The conditional use permit is renewed.

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- (b) A conditional use permit shall lapse upon termination of a project or expiration of a building permit.
- (c) Except as otherwise provided herein, a conditional use permit shall lapse if the rights granted by it are discontinued for 180 consecutive days or other period of time as specified by the City Council as part of a closure plan.
- (d) A conditional use permit for a medical marijuana establishment shall not be effective until the licensee has received State of Nevada approval and approval of a business license from the City of Henderson.
- (e) The process by which a conditional use may be extended is set forth below:
 - (1) The Community Development and Services Director may renew or extend the time of a conditional use permit when the applicant demonstrates good cause for the extension. Any such administrative extension granted shall not exceed one year in length, and no more than one extension may be granted by the Community Development and Services Director.
 - (2) Additional extensions of time may be approved by the Planning Commission, whose decision may be appealed to the City Council in accordance with the appeal procedures of Section 19.6.9.E, *Appeals*.
- (f) The process by which a discontinued use may be extended is set forth below. Uses can only be extended at the location for which they were originally approved:
 - (1) **Established Use**

Any established use, defined as a use that was approved and opened for business, which is anticipated to be discontinued for more than 180 days, may be extended as a part of an approved closure plan processed through the Community Development and Services Department, which requires City Council action. The closure plan must specify the period of time for the extension of the established use. The closure plan does not extend a business license, any business license extension shall be processed through Business Licensing Department procedures.
 - (2) **Non-Established Use**

Any non-established use, defined as a use that was approved but never opened for business, may be extended through the extension of time process described in 19.6.6.A.12(e). The extension of time must specify the period of time for the extension of the non-established use. The closure plan does not extend a business license, any business license extension shall be processed through Business Licensing Department procedures.

16. **Transferability**

The status of a conditional use permit is not affected by changes of tenancy, ownership, or management.

A conditional use permit ~~[for a medical marijuana establishment]~~ shall not be transferable to another location. ~~[, tenant, ownership or management. (Refer to NRS)]~~

17. **Amendments**

A request for changes in conditions of approval of a conditional use permit or a change to development plans that would affect a condition of approval shall be processed in the

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same manner as the original application. The Community Development and Services Director shall be authorized to approve minor modifications that have no potential for significant offsite impacts, provided that they do not involve any of the following:

- (a) A five percent or greater increase in building height;
- (b) A five percent or greater increase in floor area or building coverage when calculated on a total, aggregate project basis; or
- (c) A five percent decrease in common open space.

18. Successive Applications

Following denial of a conditional use permit request, no new application for the same or substantially the same use shall be accepted within one year of the date of denial, unless denial is made without prejudice.

19. Complaints Regarding Approved Conditional Use Permits

Complaints regarding approved conditional use permits shall be processed in accordance with the provisions of Chapter 19.11: *Enforcement*.

20. Business Licenses

Approval of conditional use permits does not guarantee the issuance or approval of a business license. Licensure must be sought, reviewed, and approved separately in accordance with all applicable Title 4 regulations for said license.