



BOARD OF TRUSTEES
December 13, 2022
Immediately following the Regular Meeting

Leeper Center, 3800 Wilson Avenue, Wellington, CO

Work Session Agenda

The Zoom information below is for online viewing and listening only.

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A. ITEMS

1. Possible Considerations for Updates to Ordinance Regulating Marijuana

- Dan Sapienza, Town Attorney

The Town of Wellington will make reasonable accommodations for access to Town services, programs, and activities and special communication arrangements. Individuals needing special accommodation may request assistance by contacting at Town Hall or at 970-568-3380 ext. 110 at least 24 hours in advance.



Board of Trustees Meeting

Date: December 13, 2022
Subject: Possible Considerations for Updates to Ordinance Regulating Marijuana

- Dan Sapienza, Town Attorney

BACKGROUND / DISCUSSION

Attached is a proposal regarding marijuana that could address some issues that have been raised around marijuana licensing. In particular, this is intended to create a path for parties desiring a reduced setback limit to request a variance through the Board of Adjustment, as with any other variance request. It also fixes an issue with Residential Zoning that has been identified and includes a suggestion from our Licensing Authority regarding hearings.

1. Apply the 200-foot setback from residential properties to R-3 zoning as well. The referred ordinance only requires a 200 foot setback from R-1, R-2, and R-4 properties, but in the new (proposed) zoning map, there will be R-3 zoning. It seems that the intent of the referred ordinance was to have uniform setbacks from all residential properties, so the attached adds R-3 properties to the list. Without this change, if properties are zoned as R-3, there would be no required setback from those properties.
2. Clarify that the LLA will not act on an application without a verification form from planning and when the LLA looks at setback requirements, any setback allowed by a variance is controlling. At present, the LLA requires verification from planning that the premises in the application meets the setback and zoning ordinances. Then, the LLA is required to hear evidence as to whether the premises complies with the setbacks requirements for marijuana.

The current process raises the question of whether the Board of Adjustment may hear a request for a variance and, if it were to grant such a variance, whether that variance would have any impact on the LLA's decision making. It appears that the answer to the first question is yes, the Board of Adjustment can hear variance requests for variances from the zoning ordinance related to marijuana business. The answer to the second question, though, is no, the LLA is obligated to ensure that the marijuana business complies with the marijuana ordinance requirements and is not bound by a possible Board of Adjustment's variance.

The proposed change would offer clarity: the setbacks and zoning requirements will be considered land use and zoning requirements, for which the Board of Adjustment has authority to hear requests for variances under a set and well-defined process. If a variance were approved, the variance would be binding on the LLA for purposes of that application's compliance with the setbacks and zoning requirements.

3. Add requirements for applicants to allow the LLA to look at neighborhood wishes and suitability of the applicant. As has been discussed previously, neighborhood wishes and suitability of an applicant are not issues on which the LLA may base decisions for issuance of a marijuana license. At present, neighbors wishing to fight a marijuana application in their area would not be allowed to present evidence at a public hearing for a marijuana license, as their views may not be considered in the LLA's decision-



making. This change would make a public hearing regarding a marijuana application more similar to a liquor license application hearing and would allow for more public input into the LLA's decision-making.

STAFF RECOMMENDATION

ATTACHMENTS

1. Ordinance Proposal - Marijuana Variance Amendment - CLEAN
2. Ordinance Proposal - Marijuana Variance Amendment - REDLINE
3. Ordinance Adopted by Voters - Retail and Medical Marijuana
4. Variance Provision - Excerpt from 2022 Land Use Code

Sec. 2-14-40. Applications—Licenses.

- (a) An application for a License shall be filed in accordance with State law on forms provided by the State Licensing Authority. The application shall contain such information as the State Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State Licensing Authority. An application shall be approved or denied by the Local Licensing Authority or the Local Licensing Official and by the State Licensing Authority. An application shall not be approved, and a license shall not be issued if either of the Licensing Authorities find that:
- The applicant knowingly made a false statement or knowingly gave false information with the application; or
 - Reliable evidence shows the applicant will operate the proposed Retail and/or Medical Marijuana Store in violation of the Colorado Marijuana Code; or
 - Good Cause, as defined in the Colorado Marijuana Code and other applicable law, exists for denial of the application.
- (b) For new license applications, the applicant shall bear the burden of proving that all qualifications for licensure have been satisfied and must also satisfy the Local Licensing Authority that the residents of the affected neighborhood desire the business, that the applicant is fit to hold the requested license, and that the applicant is prepared to operate the business in compliance with the requirements of state and local law. For purposes of this subsection, the affected neighborhood shall include the area within one-half (0.5) mile of the property line of the Premises identified in the application.

Sec. 2-14-70. Restrictions for applications for marijuana store licenses.

- (a) The Local Licensing Authority shall not receive or act upon an application for the issuance of a Local License pursuant to this Article:
- (1) Until it is established that the applicant is, or will be, entitled to possession of the Premises for which application is made under a lease, rental agreement, letter of intent or other arrangement for possession of the premises or by virtue of ownership of the Premises.
 - (2) Until it is verified by the Planning Director or their delegee that the Premises complies with all zoning and land use ordinances and said zoning ordinances shall be amended as follows:

Retail or Medical Marijuana Store Licenses shall only be permitted in the C-3 zoning district. In addition, the following setbacks will apply:
 - a. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two thousand (2,000) feet of any parcel containing a school; and
 - b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) or any parcel containing another retail or medical marijuana store License; and
 - c. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two hundred (200) feet of parcels zoned R-1 (Residential Rural Density District), R-2 (Residential Low Density District), R-3 (Residential Medium Density District)and/or R-4 (Downtown Neighborhood District).
- (b) In addition to the requirements of the Colorado Marijuana Code the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the Premises in which Retail or Medical Marijuana Store licensure application is to be sold is located within any distance restrictions established by, or pursuant to, this Section. Where a variance has been granted by the Board of Adjustments from a distance

restriction established by, or pursuant to, this Section, the distance allowed by the variance shall be deemed the applicable standard for that application.

- (c) The distance measurements and requirements pursuant to this Section shall be computed by Direct Measurement in a straight line from the nearest property line of the land containing the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

(Ord. of 12-3-21 , § 2)

Sec. 2-14-40. Applications—Licenses.

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- The applicant knowingly made a false statement or knowingly gave false information with the application; or
 - Reliable evidence shows the applicant will operate the proposed Retail and/or Medical Marijuana Store in violation of the Colorado Marijuana Code; or
 - Good Cause, as defined in the Colorado Marijuana Code and other applicable law, exists for denial of the application.
- (b) For new license applications, the applicant shall bear the burden of proving that all qualifications for licensure have been satisfied and must also satisfy the Local Licensing Authority that the residents of the affected neighborhood desire the business, that the applicant is fit to hold the requested license, and that the applicant is prepared to operate the business in compliance with the requirements of state and local law. For purposes of this subsection, the affected neighborhood shall include the area within one-half (0.5) mile of the property line of the Premises identified in the application.

Sec. 2-14-70. Restrictions for applications for marijuana store licenses.

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- (1) Until it is established that the applicant is, or will be, entitled to possession of the Premises for which application is made under a lease, rental agreement, letter of intent or other arrangement for possession of the premises or by virtue of ownership of the Premises.
 - (2) The approval of the application for Licensure for a Retail or Medical Marijuana Store LicensesUntil it is verified by the Planning Director or their delegee that the Premises e-complies with all zoning and land use ordinances and said zoning ordinances shall be amended as follows:

Retail or Medical Marijuana Store Licenses shall only be permitted in the C-3 zoning district. In addition, the following setbacks will apply:
 - a. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two thousand (2,000) feet of any parcel containing a school; and
 - b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) or any parcel containing another retail or medical marijuana store License; and
 - c. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two hundred (200) feet of parcels zoned R-1 (Residential Rural Density District), R-2 (Residential Low Density District), R-3 (Residential Medium Density District) and/or R-4 (Downtown Neighborhood Residential District).
- (b) In addition to the requirements of the Colorado Marijuana Code the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the Premises in which Retail or Medical Marijuana Store licensure application is to be sold is located within any distance restrictions established by,

or pursuant to, this Section. Where a variance has been granted by the Board of Adjustments from a distance restriction established by, or pursuant to, this Section, the distance allowed by the variance shall be deemed the applicable standard for that application.

- (c) The distance measurements and requirements pursuant to this Section shall be computed by Direct Measurement in a straight line from the nearest property line of the land containing the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

(Ord. of 12-3-21 , § 2)

Full Text of Measure:

Passage of the Ordinance to be referred to the voters of the Town of Wellington:

TOWN OF WELLINGTON

ORDINANCE NO XX-2021

**Ordinance Concerning the Regulation of
Retail and Medical Marijuana Stores in
the Town of Wellington**

WHEREAS Article XVIII, Sections 14 and 16 of the Colorado Constitution allow the personal and medical use of marijuana in Colorado subject to local; and

WHEREAS, Article XVIII, Sections 14 and 16 of the Colorado Constitution and applicable laws allowed the Town of Wellington, Colorado (the “Town”) to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or Retail Marijuana Stores and the Town enacted an ordinance prohibiting such operations.

WHEREAS, a citizen initiative was submitted to the Wellington Town Clerk to allow the sale of retail and medical marijuana and the petition was found by a C.R.S. §31-11-110 hearing officer to not be sufficient and the petition therefore was not submitted to the voters of the Town..

WHEREAS, it is unclear to the Wellington Town Board of Trustees (the “Town Board”) whether the voters wish to see the sale of medical and retail marijuana allowed in the Town and the Town Board feels that the question of whether retail or medical marijuana sales should be allowed in the Town should be decided by the Town’s voters.

WHEREAS, members of the Town Board have voiced a willingness, if flaws in the previously submitted initiated ordinance can be addressed that the Town Board might be willing to refer the question of whether retail and medical marijuana should be allowed in the Town to the Town’s voters and there has been a further willingness to refer an initial regulatory scheme to the Town’s voters so long as the Town Board would have full authority to modify the regulatory scheme after following January 1, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON COLORADO UPON APPROVAL BY THE REGISTERED ELECTORS OF THE TOWN OF WELLINGTON. COLORADO, THAT:

Section 1. Articles 13.5 of Chapter 16 and Article 13.6 of Chapter 2 of the Wellington Municipal Code are hereby repealed in their entirety.

Section 2. A new Article 14 is hereby added to Chapter 2 of the Wellington Municipal Code and shall read as follows:

Article 14 - RETAIL AND MEDICAL MARIJUANA STORES

Sec. 2-14-10 Purpose.

A. The Board of Trustees hereby declares that this Article shall be deemed an exercise of the police powers of the Town for the protection of the economic and social welfare and the health, peace, and morals of the people of the Town.

B. The Town further declares that it is unlawful to cultivate, manufacture, distribute, or sell retail marijuana or medical marijuana, except in compliance with the terms, conditions, limitations, and restrictions set forth in this Chapter, Sections 14 and 16 of Article XVIII of the State Constitution and Article 10 of Title 44, C.R.S. and 1 CCR 212-3 (the “Colorado Marijuana Code”).

Sec. 2-14-20 Powers and Duties of the Local Licensing Authority.

A. The Local Licensing Authority shall grant or deny local Licenses for the distribution and sale of retail marijuana or medical marijuana as provided by law; suspend, fine, restrict, or revoke such Licenses upon a violation of this Article or a rule promulgated pursuant to this Article; and may impose any penalty authorized by this Article or any rule promulgated pursuant to this Article. The Local Licensing Authority may take action with respect to a License accordance with the procedures established pursuant to this Article.

B. The Local Licensing Authority shall promulgate such rules and make such special rulings and findings as necessary for the proper regulation and control of the distribution and sale of Retail Marijuana to be consistent with state law for the enforcement of this Article.

C. This Article 14 incorporates the requirements and procedures set forth in the Colorado Marijuana Code. The Local Licensing Authority adopts the provisions and restrictions set forth in Colorado Marijuana Code and regulations for all Licensees not explicitly addressed within this Article. In the event of conflict between the provisions of this Article and the Colorado Marijuana Code, the more restrictive provision shall control.

D. On and after February 1, 2022, the Local Licensing Authority shall begin processing applications under this Chapter and shall process the applications in the order they are received. The Local Licensing Authority shall administratively approve any License application under this Article so long as the conditions set forth in this Article are met and the applicant has paid the operating fee and any other fees required by this Article. Local Licensing Authority fees (exclusive of State fees) for applications shall not exceed \$5,000.00.

Sec. 2-14-30 Definitions.

Any word or term used that is defined in any of the following provisions shall have the same meaning that is ascribed to such word or term as used in Article XVIII, Sections 14 or 16 of the Colorado Constitution and the Colorado Marijuana Code. C.R.S. §44-10-101, *et seq.* and C.R.S. §25-1.5-101, *et seq.* unless varied hereunder:

Colorado Marijuana Code: Article 10 of Title 44 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

Direct Measurement: A straight line from the nearest property line of the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is

located.

License: A license or registration granted pursuant to this Article.

Licensed Premises: The premises specified in an application for a License under this Article, which are owned or in possession of the Licensee and within which the Licensee is authorized to sell retail and/or medical marijuana in accordance with the provisions of the Colorado Marijuana Code.

Licensee: A person licensed or registered pursuant to the Colorado Marijuana Code and this Article.

Local Licensing Authority: The Board of Trustees of the Town of Wellington shall serve as the Local Licensing Authority unless the Town Board creates a separate Local Licensing Authority empowered to act in such capacity.

Local Licensing Official: The Town Clerk or other designee of the Local Licensing Authority.

Location: A particular parcel of land that may be identified by an address or other descriptive means.

Medical marijuana store A "Medical marijuana business" as defined by the Colorado Marijuana Code but only including a medical marijuana store, and not including a medical marijuana cultivation facility, a medical marijuana products manufacturer, a medical marijuana testing facility, a marijuana research and development licensee, a medical marijuana business operator, or a medical marijuana transporter.

Person: A natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

Premises: A distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

Protected Use: Those uses defined in Sec. 2-14-70 including Schools, parcels zoned P (Public District) or any parcel containing another Retail or Medical Marijuana Store License or parcels zoned R-1 (Residential District), R-2 (Residential District) and/or R-4 (Residential District).

Retail Marijuana Store: A "Retail Marijuana Business" as defined by the Colorado Marijuana Code but only including a retail marijuana store and not including a retail marijuana cultivation facility, a retail marijuana products manufacturer, a marijuana hospitality business, a retail marijuana hospitality and sales business, a retail marijuana testing facility, a retail marijuana business operator, or a retail marijuana transporter.

School: A public or private preschool, including a licensed daycare or a public or private elementary, middle, junior high, or high school, college, or principal campus of a college (and including the new Middle / High School at Wellington, not open as of the date of adoption of this ordinance).

State Licensing Authority: The Colorado Department of Revenue, Marijuana

Enforcement Division, created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of retail and medical marijuana in this State, pursuant to Articles 10 of Title 44 C.R.S. and Colorado Marijuana Rules 1 CCR 212-3, and other Colorado applicable statutes as applicable and incorporated in the Colorado Marijuana Code.

Sec. 2-14-40 Applications-Licenses.

An application for a License shall be filed in accordance with State law on forms provided by the State Licensing Authority. The application shall contain such information as the State Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State Licensing Authority. An application shall be approved or denied by the Local Licensing Authority or the Local Licensing Official and by the State Licensing Authority. An application shall not be approved, and a license shall not be issued if either of the Licensing Authorities find that:

- The applicant knowingly made a false statement or knowingly gave false information with the application; or
- Reliable evidence shows the applicant will operate the proposed retail and/or medical marijuana Store in violation of the Colorado Marijuana Code; or
- Good Cause, as defined in the Colorado Marijuana Code and other applicable law, exists for denial of the application.

Sec. 2-14-50 Denial of Application.

A. The Local Licensing Authority shall deny a Local License application as provided for by the Colorado Marijuana Code and regulations promulgated thereunder, and if the application contains any false, misleading information. If an application is determined incomplete by the Local Licensing Official, the applicant will be notified and be given seven (7) days to remedy and supplement the application to conform to this Article or the application may be denied.

B. The Local Licensing Official shall consider and act upon all applications in accordance with the standards of this Article and in compliance with the Colorado Marijuana Code and regulations. The Local Licensing Authority shall deny any application that is not in full compliance with this Article.

C. The Local Licensing Authority shall formulate a list of all additional requirements if needed in addition to the forms provided by the State Licensing Authority.

D. If the Local Licensing Authority denies a License, the applicant shall be entitled to a hearing.

E. If an application is denied, the Local Licensing Authority shall set forth in writing the grounds for denial.

Sec. 2-14-60 Persons Prohibited as Licensees.

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in the Colorado Marijuana Code and applicable state regulations.

Sec. 2-14-70 Restrictions for Applications for Marijuana Store Licenses.

A. The Local Licensing Authority shall not receive or act upon an application for the issuance of a Local License pursuant to this Article:

1. Until it is established that the applicant is, or will be, entitled to possession of the Premises for which application is made under a lease, rental agreement, letter of intent or other arrangement for possession of the premises or by virtue of ownership of the Premises.
2. The approval of the application for Licensure for a Retail or Medical Marijuana Store License complies with all zoning ordinances and said zoning ordinances shall be amended as follows:

Retail or Medical Marijuana Store Licenses shall only be permitted in the C-3 zoning district. In addition, the following setbacks will apply:

- a. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two thousand (2,000) feet of any parcel containing a school; and
- b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) or any parcel containing another retail or medical marijuana store License; and
- c. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two hundred (200) feet of parcels zoned R-1 (Residential District), R-2 (Residential District) and/or R-4 (Residential District).

B. In addition to the requirements of the Colorado Marijuana Code the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the Premises in which Retail or Medical Marijuana Store licensure application is to be sold is located within any distance restrictions established by, or pursuant to, this Section.

C. The distance measurements and requirements pursuant to this Section shall be computed by Direct Measurement in a straight line from the nearest property line of the land containing the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

Sec. 2-14-80 Transfer of Ownership.

A. A Local License granted under the provisions of this Article shall not be transferable except as provided in this Section, but this Section shall not prevent a change of location as provided in the Colorado Marijuana Code.

B. For a transfer of ownership, a Licensee shall apply to the State Licensing Authority and Local Licensing Authority on forms prepared and furnished by the State Licensing Authority. The Local Licensing Authority may charge a fee not to exceed \$1,000.00 to process such transfer and shall permit a transfer of ownership pursuant to this Article in conjunction with the Colorado Marijuana Code.

Sec. 2-14-90 Licensing Renewal.

A. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than thirty (30) days prior to the date of expiration with a Local Licensing Authority renewal application fee of \$1,500.00. The Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in subsection (B) of this Section. The Local Licensing Authority, in its discretion, subject to the requirements of this Article and based upon reasonable grounds, may waive the thirty (30) day time requirement set forth in this Article. The Local Licensing Authority may hold hearings on Licensing renewal applications including for good cause. Good Cause for purposes of this Section shall mean:

1. The Licensee renewal applicant has violated or has failed to comply with any terms, conditions, or provisions of this Article or the Colorado Marijuana Code or any supplemental law; ordinance; or regulation; or
2. The Licensee has been operated in a manner that adversely affects the public health or welfare of the immediate neighborhood in which the establishment is located.

B. Notwithstanding the provisions of subsection (A) of this Section, a Licensee whose License has been expired for not more than thirty (30) days may file a late renewal application upon the payment of a nonrefundable late application fee paid to the Local Licensing Authority of \$500.00 in addition to the License renewal fee paid to the Local Licensing Authority and any fees due to the State Licensing Authority. A licensee who files a late renewal application and pays the requisite fees may continue to operate until final action to approve or deny the Licensee's renewal application.

C. Notwithstanding the amount specified for the Late Application Fee, the Local Licensing Authority by rule or as otherwise provided by law may, in its discretion, may reduce the amount of the renewal application and/or the late application fee.

Sec. 2-14-100 Fees.

Every Retail and Medical Marijuana Store Licensee shall pay an operating fee at the time of its initial application for licensure and a renewal fee at the time of each application for License renewal. This fee is imposed to offset the cost of administering this License. The initial application fee and renewal fee shall be determined by the Local Licensing Authority and set by resolution, but in no event shall either fee payable to the Local Licensing Authority exceed five thousand dollars (\$5,000.00).

Sec. 2-14-110 Hours of Operation.

A Retail or Medical Marijuana Store Licensee may engage in the sale of marijuana and marijuana products between the hours of 8:00 a.m. and 9:00 p.m. daily; provided, however, that the Local Licensing Authority may at its discretion extend, but not further limit, such hours of operation.

Sec. 2-14-120 Disciplinary Actions: Suspension-Revocation-Fines.

A. In addition to any other sanctions prescribed by the State Licensing Authority, the Local Licensing Authority has the power, on its own motion after investigation and opportunity for a public hearing at which the Licensee shall be afforded an opportunity to be heard, to suspend or revoke a License issued by the Local Licensing Authority for a violation specified in subsection (B) below. The Local Licensing Authority has the power to administer oaths and issue

subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of a hearing.

B. The Local Licensing Authority may take disciplinary action for violations by Licensee or any agent, manager, or employee of Licensee of the Colorado Marijuana Code or this Article.

C. The Local Licensing Authority may, in its sole discretion, issue a fine in lieu of all or any portion of a suspension and may hold all or part of any suspension in abeyance on conditions set by the Local Licensing Authority. When determining whether to impose a fine in lieu of a suspension the Local Licensing Authority may make findings that:

1. The public safety, health and welfare would not be impaired by permitting the Licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes:
2. The books and records of the Licensee are kept in such a manner that the loss of sales that the Licensee would have suffered had a suspension gone into effect can be determined with reasonable accuracy; and
3. The Licensee has not had its License suspended or revoked during the 12-months immediately preceding the date of the motion or complaint that resulted in a final decision in relation to a penalty for violations pertaining to the Licensee.

D. The fine accepted shall be: (a) not less than five-hundred dollars (\$500.00) nor more than two thousand five-hundred dollars (\$2,500.00) for license infractions of a minor nature that do not directly impact the public health, safety, or welfare which shall include but are not limited to failure to display badges, unauthorized minor modifications of Premises, minor clerical errors in inventory tracking procedures; and (b) not less than one-thousand dollars (\$1,000.00) nor more than ten-thousand dollars (\$10,000.00) for violations that have an immediate impact on the public health, safety, or welfare.

E. Payment of a fine shall be in the form of cash or in the form of a certified check or cashier's check made payable to the Local Licensing Authority, whichever is appropriate.

F. Upon payment of the fine, the Local Licensing Authority shall enter its further order permanently staying the imposition of the suspension, if the fine is paid to a Local Licensing Authority.

G. If the Local Licensing Authority does not make the findings required in this Section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the Local Licensing Authority and Licensee shall be, upon request, afforded a hearing within thirty (30) days.

Sec. 2-14-130 Inspection of Books and Records-Inspection Procedures.

A. Each Licensee shall keep a complete set of all records necessary to show fully the business transactions of the Licensee, all of which shall be open at all times during business hours for the inspection and examination by the Local Licensing Authority or its duly authorized representatives. The Local Licensing Authority may require any Licensee to furnish such information as it considers necessary for the proper administration of this Article and may require an audit to be made of the books of account and records on such occasions as it may consider necessary.

B. The Licensed Premises, including any places of storage where retail or medical

marijuana is stored, sold, or dispensed shall be subject to inspection by the Local Licensing Authority and its investigators, during all business hours for the purpose of inspection or investigation and for examination of any inventory or books and records required to be kept by the Licensee. Where any part of the Licensed Premises consists of a locked area, upon demand to the Licensee, such area shall be made available for inspection without delay. and, upon request by authorized representatives of the Local Licensing Authority, the Licensee shall open the area for inspection.

C. Each Licensee shall retain all books and records necessary to show fully the business transactions of the Licensee for a period of the current tax year and the three (3) immediately prior tax years.

Sec. 2-14-140 Licensing Authority Established.

There is hereby established a Local Licensing Authority to issue only Retail Marijuana Store and Medical Marijuana Store Licenses upon payment of a fee and in compliance with all Local Licensing requirements to be determined by the Local Licensing Authority.

Sec. 2-14-150. Other Marijuana Licenses Prohibited.

A. Except for the specific licenses the Local Licensing Authority is authorized to issue pursuant to this Article, no other retail and/or medical marijuana licenses may be issued, including licenses for marijuana cultivation facilities, marijuana testing facilities, or marijuana products manufacturers.

B. The Local Licensing Authority declares that, should any provision, section, paragraph, sentence, or word of this Article be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions. sections, paragraphs, sentences, or words of this Article as hereby adopted shall remain in full force and effect.

Section 3. Subject to the following, prior to January 1, 2023 modification of the provisions of this ordinance shall require approval of the voters of the Town of Wellington, Colorado. Following January 1, 2023, the Town Board may modify, or repeal this ordinance by ordinance of the Town Board, prior to January 1, 2023, the Town Board may modify this ordinance by ordinance of the Town Board to comply with the Colorado Marijuana Code or other state statute or state regulation.

Section 4. The Board of Trustees declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions. sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 5. All the provisions of the Wellington Municipal Code as heretofore adopted that conflict with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

Section 6. The Town Clerk shall certify the passage of this Ordinance and cause notice of its contents and passage to be published or posted. This Ordinance shall become effective immediately upon adoption or passage by the voters.

Variance Provisions of the 2022 Land Use Code

Available at: <https://www.wellingtoncolorado.gov/DocumentCenter/View/3859/Land-Use-Code--->

ADOPTED

2.22 Variance

2.22.1 Purpose. A variance provides relief from the strict application of a standard to a specific site that would create an unnecessary hardship or practical difficulties on all reasonable use of the property.

2.22.2 Applicability. Variances may be sought for relief from dimensional and numerical standards of this Land Use Code. Variances may not be sought to vary the allowed use on a property.

2.22.3 Procedure. All applications for Variances shall comply with the following specific procedures in addition to the general procedures set forth in Section 2.04.

A. *Pre-application Conference.* A pre-application conference is required for a variance application to discuss specific application procedures, criteria, and requirements for a formal application.

B. *Application Submittal.* The variance application shall include:

1. A site plan detailing property boundaries, footprints of all existing and proposed buildings, parking configuration, location of all utilities and easements, and any other details required to demonstrate conformance with all regulations and development standards applicable to the proposed zoning district;
2. A written narrative justifying why the proposed variance fits in with the surrounding neighborhood;
3. Conceptual building plans, including elevations, exterior materials, doors, decks, etc., if applicable;
4. Any other information identified in the pre-application meeting.

C. *Review and approval.*

1. Board of Adjustments Review.
 - a. The Board of Adjustments shall hold a public hearing and review the application at a regular meeting. Public notice shall be given pursuant to Section 2.02. The applicant or their representative may be present at the meeting to present the proposal. Staff shall present their staff report and

recommendation.

- b. The Board of Adjustments shall either approve, approve with conditions, or deny the application, or continue the hearing pursuant to Section 2.02.4, with the requirement that the applicant submit changes or additional information which they find necessary to determine whether the application complies with the Town's regulations, goals, and policies.
- c. Any information, exhibits, plans or elevations, whether conceptual or detailed, that are part of the application approved by the Board of Adjustments shall be considered a part of, and inseparable from, the approval. All development shall conform to the approved plans, unless otherwise provided for within this Land Use Code.

2.22.4 Findings for Approval.

- A. The relief requested is consistent with the Comprehensive Plan and the intent stated in this Land Use Code;
- B. Strict application of the regulation will result in an unnecessary hardship and practical difficulties on all reasonable use of the land intended by the existing zoning, as opposed to convenience or benefit of the applicant or a specific application;
- C. The need for the variance is due to specific and unique physical conditions on the site that do not exist on similarly situated land in the area;
- D. The manner in which strict application of the regulation deprives the applicant of reasonable use of the land compared to other similarly situated land in the area;
- E. The circumstances warranting the variance are not the result of actions by the applicant, or could not be reasonably avoided by actions of the applicant;
- F. Granting the variance will not harm the public health, safety and welfare or the purposes and intent of these regulations;
- G. The relief requested is the minimum necessary to alleviate the hardship and practical difficulties; and
- H. The relief requested is consistent with any other prior approvals and official plans and policies created under the guidance of that plan for these areas (e.g., The Comprehensive Plan, specific area plans like a Downtown Corridor Study, etc.).