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TO: Grand Lake Board of Trustees  
FROM: Brian Blumenfeld, Esq. – RZA Legal  
DATE: December 8, 2022  
RE: Marijuana Legalization Workshop

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The below outline includes certain marijuana legalization topics for the Board of Trustees (the “Board”) to review and discuss at the December 12, 2022 town workshop. In addition to informational content, the outline consists of examples and recommendations meant to generate discussion and questioning, and to explore the advantages and disadvantages of various regulatory and policy options. Counsel strongly recommends that the Board hear comments and consider input on these issues from the public, members of the marijuana industry, and other interested stakeholders.

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## **I. NUMBER OF DISPENSARIES:**

**Summary:** Ballot Measure 2C (permitting marijuana operations in Grand Lake), and Ballot Measure 2A (permitting a new tax on recreational marijuana operations), leave to the Board the decision over how many dispensaries to permit in the town.

**Recommendation:** Draft ordinance for one (1) dispensary license to be initially awarded under a lottery system (see below re: lottery). The Board may then review, one year from the opening of the first dispensary, the impacts of marijuana legalization and the operations of the first dispensary. Upon such review, the Board shall have the discretionary authority to allow for one (1) additional dispensary, to be awarded under a new lottery. At no time shall there be more than two (2) licensed dispensaries in the town. If at any time a dispensary has its license revoked or its license becomes inactive, the Board shall have the authority (though not the obligation) to conduct a new lottery for granting a new license.

## **II. LOTTERY:** \*The Board has indicated specific interest in conducting a licensing lottery. The outline below provides an example of a lottery system. The Board should review and discuss each line item and the variations available thereto. Many of the line items below can also be used in a merit licensing system, if the Board chooses that model.

### **A. Example of Lottery Procedure, Timeline, and Application Content:**

1. Ordinance passes on 1/1/2023 (to begin with a round number).
2. Town creates application forms and posts same to town website by 2/15/2022.
3. Window for submitting application to town for entry into lottery opens on 2/15/2022 and ends 4/1/2022.
  - a) Application for entry into lottery includes:
    - (1) Completed town application forms;

- (a) Ensure no common control / separate funding / strawman among applicants;
  - (b) Prohibit ‘formula businesses’ (chains)?
- (2) Proof of submission to state Marijuana Enforcement Division (“MED”) an application for Findings of Suitability (“FOS”); see MED FOS application included in hearing packet.
- (3) Executive summaries for:
  - (a) Business Plan;
  - (b) Actual or proposed funding plan (prove access to adequate capital for starting business, or plan to secure such adequate funding);
  - (c) Operations Plan;
  - (d) Security Plan;
  - (e) Community Impact Plan, including hiring/employment plan;
  - (f) Proof of control or conditional control of qualifying location; or plan for acquiring same:
    - (i) Allow for real estate purchase closing or lease commencement to be conditioned on license approval;
    - (ii) The Board could *require* proof of a qualifying location for entry into the lottery. Discussion Point: This would likely advantage existing building owners, and/or high capital applicants who can afford (before knowing if they will be selected in lottery) the upfront costs of (1) a real estate purchase or purchase option, (2) a premium rent amount for marijuana use tenancy, and/or (iii) a lease commencement holding fee pending licensing approval, etc. This would likely disadvantage smaller business applicants who often structure their investor funding to be contingent on licensing approval, conditional approval, or lottery selection.
  - (g) Personnel resumes, including business experience and community involvement;
- (4) For “bonus” weight in lottery:
  - (a) Proof of town or county residence;
  - (b) Proof of local community involvement/service;
  - (c) Proof of Social Equity certification from MED
    - (i) This is a socioeconomic classification vetted by the state.

- (d) Discuss: other
  - (e) Legal note: If use localist weighting, counsel recommends providing legislative findings and/or preamble declarations for reasons why awarding weighted criteria. If weighting is challenged under DCC or Equal Protection, ordinance must be clear that the localism preference advances a legitimate governmental purpose/interest, and is not mere discrimination against non-locals.
4. For approval of entry into lottery, applications must be complete and submission materials must demonstrate:
    - a) Knowledge of state and local laws and regulations;
    - b) Knowledge of cannabis industry and/or competence in operating a business in another highly regulated industry;
    - c) Professionalism in business/operations/funding plans/
    - d) \*Or, applicant responses to each of the above §3 submission categories can be graded on a points system, with a minimum point requirement to qualify for lottery. If choose point system, can award “bonus” points for local/social equity/etc.
  5. Incomplete applications will be given deficiency notice by town and have fifteen (15) days from notice date to correct deficiency.
  6. Applications to be reviewed for meeting §4 criteria regarding §3 submission categories, or for awarding points to §3 submission categories, by (for one option/example):
    - a) A Review Committee, consisting of:
      - (1) staff member(s);
      - (2) board member designated by board;
      - (3) representative from other town departments;
      - (4) one local business owner (interested business owners could apply for review committee membership and be chosen by lot);
      - (5) one local homeowner/resident (interested homeowners/residents could apply for review committee membership and be chosen by lot);
      - (6) third-party consultant /marijuana industry expert.
  7. Review committee either determines if applicant is approved for entry into lottery, or makes recommendation to Board and Board determines approval for entry.
  8. Final decisions on lottery entrants made by 5/1/2022.
  9. Lottery conducted at public meeting on 5/15/2022.
  10. Applicant chosen in lottery has until 7/1/2022 to submit to town proof of:
    - a) (If not requiring qualifying location prior to lottery:) Possession of qualifying location; including, if a lease, consent from property owner for dispensary use;

- b) Access to adequate start-up funding;
  - c) Final FOS and Business License approval from state MED;
  - d) Other business or personnel information / documentation requested by the town.
- 11. Public hearing before Board for vote on final approval of local license held 8/1/2022. Board vote based on 'Health, Safety, Welfare' standard.
  - a) If approved, Board may attach license conditions specific to licensee's property, building, business operations, personnel, signage, etc.
- 12. If approved, applicant has six (6) months from date of local approval to begin operations open to the public. If applicant cannot meet this deadline, applicant can request Board to grant extension for good cause. If no extension granted, license is revoked, and town begins lottery process over to select another applicant.

#### B. RENEWAL

- 1. A license is valid for one (1) year. Licensees must apply to renew license each year. Board may, in its discretion, hold hearing on renewal. For renewal, licensee must demonstrate compliance with all state and local laws, and all license conditions. If Board finds violations of above or demonstrable incompetence / inability to operate, Board can reject renewal of license.

### III. ZONING / LOCATION:

**Summary:** State law does not restrict the location of marijuana businesses, and state law does not impose distance minimums from marijuana businesses to other properties with specific uses (e.g. schools, parks, churches, etc.). Town's Draft Marijuana Ordinance §6-5-5(b) states that dispensaries may operate within the Commercial Zoning District or a Planned Development District, but not in the Central Business District. Per Draft Regs §6-5-5(c)(1), a dispensary must be at least (a) 1,000 ft from "any educational institution or school", (b) 200 ft from "any existing licensed childcare facility at the time of initial application", or per §6-5-5(C)(2) 500 ft from another dispensary.

**To Clarify:** Will dispensary be a Use by Right, or will the applicant be required to go through the planning commission process for a Conditional Use Permit? If Use by Right, then must add 'duly licensed marijuana dispensary' to Use by Right list in §12-2-18 (commercial); and if allowing in commercial-transitional, then also add to list in §12-2-17 (or, if allowing in commercial-transitional, then can add 'duly licensed dispensary' to definition of 'Neighborhood Business' which is in definition section of land use regs at §12-2-6).

**Distance Minimum Example for Gaming Use, from GL Town Code §12-2-17(8):**

“Limited Gaming, to the extent authorized by (Constitution of the State of Colorado, Section 9, Article XVIII), provided that no portion of any building used for or in connection with such purposes shall be within five hundred (500) feet of any church, or any public, parochial, or private school, or any public or historical property, for the purposes of this Ordinance, "Public or Historical Property" shall mean all property other than public streets and sidewalks that is owned or administered by or for a local, state or Federal government, including all agencies and subdivisions thereof, or historical society, which public or historical property shall include, without limitation, those properties commonly known as Triangle Park, Hilltop Park, Point Park, Town Square, Town Beach, Lake Front, Chamber of Commerce, Kauffman House, United States Post Office, Rocky Mountain National Park, and Arapaho National Forest; said five hundred (500) feet shall be computed consistent with measurements made pursuant to C.R.S. § 12-47-111(2).”

**Recommendation:** The Board should discuss, and hear public comment regarding, the zoning and distance restrictions for dispensaries. A critical factor to weigh is how realistic it will be for a dispensary applicant to find a qualifying location, balanced against the Board’s interest in keeping dispensaries out of certain zoned areas or far enough away from certain property uses (schools, parks, etc.). If qualifying locations are too restrictive, applicants selected in the lottery may not be able to find a property and therefore will be unable to open / proceed with final licensing process. If the Board chooses to require proof of qualifying location for entry into lottery, see §II(A)(3)(f) above, then the more restrictive the zoning/distance minimums are, the fewer lottery entrants there will be.

Once zoning/distance decisions are made, staff should create a marijuana-specific map, showing all zones where dispensaries will be permitted, and including in distance restrictions and map scale in the map key.

**Notes:** “Central Business District” is only defined, and shown on a town map, in Exhibit A to Ordinance 04-2022 (see map below). It is not defined in the town code, on the 2020 zoning map or in the town comprehensive plan. This makes it difficult for stakeholders or the public to locate the maps needed to fully understand marijuana zoning. Counsel recommends including current relevant maps under a ‘Marijuana Legalization’ tab on town website (which should also include all marijuana workshop materials). Also, the language in §1 of Ordinance 04-2022 describing the Central Business District (“CBD”;-) states that the CBD runs along Park from Hancock to Vine; but the map attached to the Ordinance as Exhibit A shows the CBD running along Park from Hancock to Ellsworth. Counsel believes the map is correct and §1 is mistaken, but either way for everyone’s clarification the Board should address and correct the inconsistency.



application of building materials will generate a more inviting, vibrant and harmonious appearance to the Town.”

*B. Signage-* Chapter 6 (business regulations), Article 2 of the town Code provides extensive sign regulations and a sign review/permitting process.

1. Town’s Draft Marijuana Ordinance §6-5-5(e) adds restrictions specific to marijuana:

a) “Advertisements, signs, displays or other promotional material depicting marijuana uses or symbols shall not be shown or exhibited off the premises. No signage associated with a retail marijuana establishment shall use the word "marijuana," or any other word or phrase commonly understood to refer to marijuana. No signage may display photographs or other representations of marijuana plants.”

b) Consider changing above where it states “...off premises” to “...**on or** off premises.”

2. Ensure all signage consistent with surroundings / character of neighborhood and town.

a) Consider requiring the Review Committee (see §II(A)(6)(a) above) to approve, or provide an approval recommendation for, the signage plan.

## **V. TOPICS FOR NEXT WORKSHOP:**

*A. Taxation*

*B. Application and Licensing Fees*

*C. Restrictions on Transfer of Ownership / Ownership Structure*

*D. Federal lands: notices / signage / labelling*

*E. Other*