

Land Development Code Amendment Request

ORIGIN: Board of County Commissioners

AUTHOR: Growth Management Department Staff

LDC SECTION(S): 1.08.02 Definitions
2.03.03 Commercial Zoning Districts
2.03.04 Industrial Zoning Districts
2.03.06 Planned Unit Development Districts
2.03.07 Overlay Zoning Districts
5.05.16 Medical Marijuana Dispensaries
10.03.06 Public Notice and Required Hearings for Land Use Petitions

SUMMARY: The proposed amendment introduces regulations regarding the location and use standards for medical marijuana dispensaries consistent with state law. The amendment provides for medical marijuana dispensaries in the same zoning districts that allow pharmaceutical uses or retail drug store sales. The amendment also prohibits medical marijuana dispensaries within 500 feet of public or private elementary, middle, or secondary schools unless a waiver is granted by the Board of Zoning Appeals (BZA). Several additional criteria are included consistent with state law.

DESCRIPTION:

Board Direction

On February 2, 2017, the Board initiated a 6-month moratorium on Cannabis Dispensing Businesses until appropriate regulations for a land development code amendment are developed, vetted with the Community and the Planning Commission. On May 9th, 2017, the Board identified a moratorium end date of October 10, 2017, and directed staff to include criteria for locating medical marijuana businesses and the number of allowable dispensaries.

Regulatory Framework for Medical Marijuana Dispensaries

The State Legislature adopted comprehensive amendments to F.S. 381.986 on June 9, 2017. Several provisions in this legislation impact the ability of local governments to regulate the medical marijuana industry as described below.

1. Cultivation, processing, and delivery

F.S. 381.986 (11), states, "Regulation of cultivation, processing, and delivery of marijuana by medical marijuana treatment centers is preempted to the state." Accordingly, this amendment does not address cultivation, processing, or the delivery of medical marijuana.

2. Medical marijuana dispensaries

Revised F.S. 381.986 (11) (b) prohibits local governments from setting limits on the number of medical marijuana dispensaries that may locate within the community. Each Medical Marijuana Treatment Center is authorized to dispense low-THC cannabis, medical cannabis, and cannabis delivery devices and are allowed up to 25 dispensing facility licenses. As the

number of registered qualified patients increases it is anticipated the number of dispensary facility licenses will increase.

The new legislation provides local governments with two options for addressing the location and permitting criteria of medical marijuana dispensaries:

- 1) Local governments may ban medical marijuana dispensaries from being located within the boundaries of the community, or
- 2) Local governments may adopt location and permitting criteria for medical marijuana dispensaries that are not more restrictive than those criteria established for pharmacies.

This amendment proposes the establishment of location and permitting criteria for medical marijuana dispensaries consistent with those established for pharmacies/drug stores and as allowed by State law.

Proposed Standards

1. Definitions:

The definitions consist of the following: *Low-THC Cannabis*, *Marijuana*, *Medical marijuana dispensary*, and *Medical Use*. These definitions are limited to describing the forms of medical use of marijuana or definitions consistent with State statutes.

2. Zoning Districts for Medical Marijuana Dispensaries:

Commercial zoning districts

Staff recommends the dispensary be treated the same as pharmacies and drug stores in the following commercial districts: C-2 with a limitation on size of 1,800 square feet or less, C-3, C-4, and C-5 with no additional limitations other than the requirements set forth in the new LDC section 5.05.16.

Business Park District

A medical marijuana dispensary would be one of the several permitted secondary accessory uses that are allowed but subject to a maximum of 30 percent of the business park district. This is the same limitation for a drug store.

Research and Technology Park PUDs (RTP-PUDs)

A RTP-PUD district accommodates a mixture of targeted and non-targeted industries necessary to stimulate economic development and/or create additional employment opportunities in accordance with the Growth Management's research and technology subdistrict. A drug store and pharmacy are one of several businesses that are non-targeted permissible industries serving as commercial support services to light industrial uses. The development of these uses including a dispensary is limited up to 20 percent of the total research and technology park's net acreage.

Overlay Zoning Districts

Medical marijuana dispensaries are added to those Overlay Zoning Districts where drug stores are specifically listed as permitted uses, including Santa Barbara Commercial Overlay (SBCO) and Golden Gate Downtown Center Commercial Overlay (GGDCCO) districts.

3. Supplemental Standards:

The amended statute stipulates that dispensing facilities shall not be located within 500 feet of private or public schools. However, a waiver to the distance separation can be given provided the location promotes the public health, safety, and general welfare of the community and the proceeding is open to the public. Staff has proposed a medical marijuana dispensary distance waiver requirement process similar to the alcoholic beverage sales waiver process, which includes a public hearing process.

Lastly, the amendment cross-references F.S. 381.986 for site design, security, and use restrictions. The statute outlines an extensive review process to be administered and overseen by the FDOH’s “Office of Medical Marijuana Use”. Staff will not review the state Statutes for compliance since the Office of Medical Use is charged with administering the regulations and full enforcement compliance.

Prohibitions

The legislation states that “low-THC and medical cannabis cannot be consumed by smoking or consumed on public transportation, a public place, vehicle, aircraft, and boat or on a place of employment restricted by the employer.” The following prohibitions are included: 1) sales or consumption of alcoholic beverages be prohibited on the premises of the property, 2) the administering of marijuana outside the dispensary be prohibited, and 3) drive through service be prohibited. These requirements would limit the potential for illicit sale of marijuana and alcoholic beverages, serve to deter crime, and remove the potential for driver intoxication risk.

FISCAL & OPERATIONAL IMPACTS: There are no anticipated fiscal or operational impacts associated with this amendment.

GROWTH MANAGEMENT PLAN IMPACT: There are no growth management plan impacts associated with this amendment.

OTHER NOTES/VERSION DATE:

Amend the LDC as follows:

1 **1.08.02 Definitions**

2 * * * * *

3 Low-THC cannabis: Has the same meaning as in F.S.381.986; a plant of the genus
4 Cannabis, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and
5 more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted
6 from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or
7 preparation of such plant or its seeds or resin that is dispensed from a **medical marijuana**
8 **dispensary.**

Marijuana: Has the same meaning as in F.S. 381.986; all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including **low-THC cannabis**, which are dispensed from a **medical marijuana dispensary** for medical use by a qualified patient.

Medical marijuana dispensary: A dispensing facility of a medical marijuana treatment center, which is licensed in accordance with F.S. 381.986.

Medical use: Has the same meaning as in F.S. 381.986; the acquisition, possession, use, delivery, transfer, or administration of **marijuana** authorized by a physician certification.

The term does not include:

- a. Possession, use, or administration of **marijuana** that was not purchased or acquired from a **medical marijuana dispensary**.
- b. Possession, use, or administration of **marijuana** in a form for smoking, in the form of commercially produced food items other than edibles, or of **marijuana** seeds or flower, except for flower in a sealed, tamper-proof receptacle for vaping.
- c. Use or administration of any form or amount of **marijuana** in a manner that is inconsistent with the qualified physician's directions or physician certification.
- d. Transfer of **marijuana** to a person other than the qualified patient for whom it was authorized or the qualified patient's caregiver on behalf of the qualified patient.
- e. Use or administration of **marijuana** in the following locations:
 - i. On any form of public transportation, except for **Low-THC cannabis**.
 - ii. In any public place, except for **Low-THC cannabis**.
 - iii. In a qualified patient's place of employment, except when permitted by his or her employer.
 - iv. In a state correctional institution, as defined in F.S. 944.02 or a correctional institution, as defined in F.S. 944.241.
 - v. On the grounds of a preschool, primary school, or secondary school, except as provided in F.S. 1006.062.
 - vi. In a school bus, a vehicle, an aircraft, or a motorboat, except for **Low-THC cannabis**.

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2.03.03 Commercial Zoning Districts

B. Commercial Convenience District (C-2).

1. The following uses, as identified with a number from the Standard Industrial Classification Manual (1987), or as otherwise provided for within this section are permissible by right, or as **accessory** or **conditional uses** within the C-2 commercial convenience district.

a. Permitted uses.

46. **Medical marijuana dispensary** with 1,800 square feet or less of gross floor area in the **principal structure**, and subject to LDC section 5.05.16.

****Renumber remaining uses****

* * * * *

1 C. Commercial Intermediate District (C-3).

2 * * * * *
3 1. The following uses, as identified with a number from the Standard Industrial
4 Classification Manual (1987), or as otherwise provided for within this section are
5 permissible by right, or as **accessory** or **conditional uses** within the commercial
6 intermediate district (C-3).

7 a. **Permitted uses.**

8 * * * * *
9 57. Medical marijuana dispensary, subject to LDC section 5.05.16.
10 **Renumber remaining uses**

11 * * * * *
12 D. General Commercial District (C-4).

13 * * * * *
14 1. The following uses, as defined with a number from the Standard Industrial
15 Classification Manual (1987), or as otherwise provided for within this section are
16 permissible by right, or as **accessory** or **conditional uses** within the general
17 commercial district (C-4).

18 a. **Permitted uses.**

19 * * * * *
20 86. Medical marijuana dispensary subject to LDC section 5.05.16.
21 **Renumber remaining uses**

22 * * * * *
23 E. Heavy Commercial District (C-5).

24 * * * * *
25 1. The following uses, as identified with a number from the Standard Industrial
26 Classification Manual (1987), or as otherwise provided for within this section are
27 permissible by right, or as **accessory** or **conditional uses** within the heavy
28 commercial district (C-5).

29 a. **Permitted uses.**

30 * * * * *
31 106. Medical marijuana dispensary subject to LDC section 5.05.16.
32 **Renumber remaining uses**

33 # # # # # # # # # # # # #

34
35 **2.03.04 Industrial Zoning Districts**

36 * * * * *

37 B. Business Park District (BP).

38 * * * * *
39 1. The following uses, as identified within the latest edition of the Standard
40 Industrial Classification Manual, or as otherwise provided for within this section,
41 are permitted as of right, or as uses accessory to permitted primary or secondary
42 uses, or are conditional uses within the business park district.

43 * * * * *
44 b. Permitted secondary uses accessory to the business park district.
45 Development is limited to a maximum of 30 percent of the total acreage of
46 the business park district for the following uses:

47 * * * * *
48 6. Medical marijuana dispensary in conjunction with health
49 services group and medical laboratories/research/rehabilitative
50 groups.

51 **Renumber remaining uses**

52 # # # # # # # # # # # # #

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2 **2.03.06 Planned Unit Development Districts**
3 * * * * *

4 C. PUD districts shall hereafter be established by amendment of the official zoning
5 atlas according to the procedures established in LDC section 10.02.08 and the
6 Administrative Code. The purpose and intent of establishing and identifying the
7 following classifications is to identify a relationship between a proposed PUD and
8 the other zoning districts within this LDC. The goal is to relate the purpose and intent
9 of the PUD zoning district and the uses permitted within a PUD to defined zoning
10 districts within this LDC and to establish appropriate uses and performance
11 standards within this PUD, which are similar to those allowed by the most similar
12 district(s). PUDs shall hereafter be defined by the following districts and shall be
13 referenced as such within the PUD document as follows:

- 14 7. *Research and technology park planned unit **development** district.* This
15 district is intended to accommodate a planned unit **development** with a
16 mixture of targeted industry uses - aviation/aerospace, health technology
17 industry, information technology industry, and light, low environmental impact
18 manufacturing industry and non- **industrial uses**, in accordance with the
19 design requirements of section 4.07.05 of this LDC and the GMP research
20 and technology park subdistrict.
- 21 a. *Type A* - Research and technology park in the urban-mixed use
22 district of the GMP.
 - 23 b. *Type B* - Research and technology park in the urban commercial
24 district of the GMP.
 - 25 c. *Type C* - Research and technology park in the urban industrial district
26 of the GMP.
 - 27 d. At a minimum, 60 percent of the total park net acreage shall be
28 devoted to target industry uses as defined below in section 2.03.06(D)
29 of this LDC, use regulations table.
 - 30 e. Non-target industries, as defined below in section 2.03.06(D) of this
31 LDC, use regulations table, and **workforce housing**, shall be
32 permitted to include up to twenty (20) percent of the total park net
33 acreage.

34 D. The following are permissible uses in the Research and Technology Park PUD:

Identified Use	Special Notes Or Regulation	RTPPUD
Accessory uses and structures	4.07.02 and 5.03.00	P
Accounting 8721, 7521,7231,7241		NT
Administrative offices		P (2)
Aircraft & Parts 3721-3728		T
Aviation/Aerospace Industries		
ATM (automatic teller machine)		P
Automobile service station	§5.05.05	NT
Banks and financial establishments		
Group I 6011—6062	NT	
Group II 6081—6173	NT	
Bar or cocktail lounge		-
Barber Shops 7241		NT
Beauty Shops 7231		NT

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Bold text indicates a defined term

Boats: Boat ramps and dockage (not marinas) Boat rental Boat repair and service Boat sales	5.03.06	NT -NT
Broadcast studio, commercial radio and television		T
Business services 7311—7352, 7359—7389		NT
Cable and other pay television services 4841		T
Call Center and Customer Support Activities		T
Car wash		NT
CD-ROM development		T
Clothing stores, general		NT
Communication groups 4812—4841		T
Communication towers: 75 feet or less in height More than 75 feet in height	5.05.09	P CU
Computer and data processing services, Computer related services, not elsewhere classified		T
Consumption on premises		NT
Convenience food and beverage store		NT
Day care center, adult & child services		P/NT
Data and Information processing		T
Development testing and related manufacturing		T
Drive-through facility for any Permitted use		P
Drugs, Medicine 2833-2836		T
Drugstore, pharmacy 5912		NT
Dwelling unit: Single-family, duplex Two-family attached Townhouse, multiple-family building		P P P
Educational, scientific and research organizations		T
Engineering 0781, 8711—8713, 8748		NT
Export based laboratory research or testing activities		T
Fences, walls	5.03.02	P
Food and beverage service, limited		NT
Food stores 5411—5499		NT
Gasoline dispensing system, special		NT
General Merchandise 5331—5399		NT
General Contractors 1521—1542		NT
Gift and souvenir shop		NT
Hardware store 5251		NT
Health care facilities: 8011—8049 8051—8099		NT NT
Health Technologies		T
Heliport or helistop		P
Hobby, toy and game shops		NT
Hotel/motel: 7011, 7021, 7041		NT
Housing units for employees only	5.05.03	P
Insurance companies 6311—6399, 6411		NT

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Information Technologies		T
Laboratories 5047, 5048, 5049, 8071, 8731, 8734		T
Laundry or dry cleaning		NT
Legal Offices 8111		NT
MANUFACTURING OF:		
1. Electronics 3612—3699		T
2. Measuring, analyzing & Controlling instruments, 3812—3873		T
3. Novelties, jewelry, toys and signs		NT
Management 8741—8743, 8748		NT
Medical Laboratory 8071, 8072, 8092, 8093		T
<u>Medical marijuana dispensary</u>	<u>5.05.16</u>	<u>NT</u>
Membership Organization 8611—8699		NT
Motion picture production studio 7812—7819		NT
Multimedia activities		T
Parks		P
Parking lot:		P
Accessory		P
Garage, public parking		
Personal services 7211—7299		NT
Pharmacy		NT
Photo finishing laboratory		T
Photographic Studios 7221		NT
Physical Fitness 7991		NT
Play Ground		P
Printing and publishing 2752		T
Production facilities and operations/technology based		T
Professional Office		NT
Research, development laboratories & Technology Parks: 8071, 8731, 8734	See Note (3)	P
All others		P
Residential Development including care units, family care facilities and group care facilities		P
Residential accessory uses		NT
Restaurant, fast food		NT
Restaurants 5812—5813		NT
Schools:		NT
Commercial 8243—8299		
Security & Commodity Brokers 6211—6289		NT
Self-service fuel pumps		NT
Signs in accordance with <u>5.06.00</u>	§ 5.06.00	P
Storage:		P
Indoor only		
Studios		NT
Telephone communications 4813		T
Travel Agency 4724		NT

1
2
3
4

Legend: (-) not permitted, (P) permitted, (CU) conditional use (T) target industry [RTPPUD only], (NT) non-target industry [RTPPUD only]

Notes:

- (1) Subject to limitations for commercial uses set forth in subsection 2.03.03 C. of this LDC.
- (2) Accessory uses only
- (3) Subject to ordinance 02-24 (GMP amendment).

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2.03.07 Overlay Zoning Districts

* * * * * * * * * * * * *

H. Santa Barbara Commercial Overlay District (SBCO). Special conditions for properties **abutting** the east side of Santa Barbara Boulevard and the west side of 55th Terrace S.W., as referenced in the Santa Barbara Commercial Subdistrict Map (Map 7) of the Golden Gate Area Master Plan. This is referenced as figure 2.03.07 H. below.

* * * * * * * * * * * * *

6. The following uses, as identified within the latest edition of the Standard Industrial Classification Manual, or as otherwise provided for within this section, are permitted as of right, or as uses **accessory** to permitted primary or secondary uses, or are **conditional uses** within the Santa Barbara Commercial Overlay District.

a. Permitted uses.

* * * * * * * * * * * * *

51. **Medical marijuana dispensary**, subject to LDC section 5.05.16.

Renumber remaining uses

* * * * * * * * * * * * *

O. Golden Gate Downtown Center Commercial Overlay District (GGDCCO). Special conditions for properties in the vicinity of Golden Gate Parkway in Golden Gate City, as identified on the Golden Gate Downtown Center Commercial Subdistrict Map of the Golden Gate Area Master Plan and as contained herein.

* * * * * * * * * * * * *

4. **Permitted uses.**

* * * * * * * * * * * * *

c. Commercial uses:

* * * * * * * * * * * * *

48. **Medical marijuana dispensary** limited to 5,000 square feet per floor and subject to LDC section 5.05.16.

Renumber remaining uses

#

5.05.16 Medical Marijuana Dispensaries.

A. Purpose and Intent. The purpose of this section is to provide for the **compatibility of medical marijuana dispensaries** to protect the health, safety, and welfare of the general public.

B. Applicability. All **medical marijuana dispensaries** shall meet the standards in LDC section 5.05.16 C., D., and E. below.

C. Separation Distances.

1. A **medical marijuana dispensary** may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school. The distance of 500 feet may be measured as the shortest distance between the lot on which the public or private elementary school, middle school, or secondary school is located and the lot on which the **medical marijuana dispensary** is located except that **medical marijuana dispensaries**

located in **shopping centers** shall be measured to the outer wall of the establishment.

2. The erection of any public or private elementary school, middle school, or secondary school subsequent to the issuance of a site **development plan** for a **medical marijuana dispensary** shall not cause the medical marijuana dispensary to become **nonconforming**.

3. Waiver of Separation Requirements. The BZA may, by resolution, grant a waiver of part or all of the minimum distance requirements set forth herein if it is demonstrated by the **applicant** and determined by the BZA that the site proposed for the **medical marijuana dispensary** is separated from an established public or private elementary school, middle school, or secondary school by natural or manmade boundaries, **structures**, or other features which offset or limit the necessity for such minimum distance requirement. The BZA's decision to waive part or all of the distance requirement shall be based upon the following factors:

a. The nature and type of natural or manmade boundary, **structure**, or other feature lying between the proposed establishment and an existing public or private elementary school, middle school, or secondary school which is determined by the BZA to lessen the need for the total distance requirement. Such boundary, **structure**, or other feature may include, but is not limited to, lakes, marshes, nondevelopable **wetlands**, designated preserve areas, canals, and major rights-of-way.

b. The paths of vehicular and pedestrian traffic which could be taken between the **medical marijuana dispensary** and the public or private elementary school, middle school, or secondary school.

c. The location promotes the public health, safety and general welfare of the community.

4. The Administrative Code shall establish the submittal requirements for a waiver request.

D. For site design, security and use standards, see F.S.381.986.

E. Prohibitions.

1. The sale or consumption of alcoholic beverages on the premises of a **medical marijuana dispensary** is prohibited.

2. The caregiver or qualified patient shall not administer **marijuana** outside of the **medical marijuana dispensary**.

3. Drive-throughs, drive-ins, curbside pickup, take-out windows or similar outdoor transaction facilities and outdoor transactions are prohibited.

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10.03.06 Public Notice and Required Hearings for Land Use Petitions

This section shall establish the requirements for public hearings and public notices. This section shall be read in conjunction with LDC section 10.03.05 and Chapter 8 of the Administrative Code, which further establishes the public notice procedures for land use petitions.

* * * * *

U. **Automobile Service Station** Waiver pursuant to LDC section 5.05.05, and Alcohol Beverage Distance Waiver pursuant to LDC section 5.05.01, and **Medical Marijuana Dispensary** Separation Distance Waiver pursuant to LDC section 5.05.16.

1. The following advertised public hearings are required:

a. One BZA or Hearing Examiner hearing.

2. The following notice procedures are required:

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- 1 a. For an Alcohol Beverage Distance Waiver, an Agent Letter shall be sent
- 2 to property owners within 150 feet of the area covered by the petition
- 3 following the initial staff review comments and prior to the second
- 4 submittal.
- 5 b. Newspaper Advertisement prior to the advertised public hearing.
- 6 # # # # # # # # # # # #

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L. Medical Marijuana Dispensary Distance Waiver

Reference **LDC** subsection 5.05.16, and **LDC** Public Notice subsection 10.03.06 U.

Applicability This provides for waiver of part or all of the minimum separation distance required between medical marijuana dispensaries and a public or private elementary school, middle school or secondary school.

Pre-Application A pre-application meeting is required.

Initiation The **applicant** files a "*Petition for Waiver from Separation Requirements for Medical Marijuana Dispensaries*" with the Planning & Zoning Division.

Application Contents The application must include the following:

1. **Applicant contact information.**
2. **Property information, including:**
 - Legal description;
 - **Property identification number;**
 - Section, township and range;
 - Subdivision, unit, lot and block, or metes and bounds description; and
 - Address of subject site.
3. **Zoning information, including:**
 - Current zoning of subject property; and
 - Adjacent zoning and land use.
4. **A statement describing the extent of the waiver requested, in linear feet, from the required separation.**
5. **A description of all proposed uses for the subject site/structure, including the following:**
 - Total square footage of subject structure.
 - Square footage dedicated to each proposed use.
 - Proposed hours of operation.
 - Indication of lease space if located in a shopping center or multi-tenant building.
6. **A narrative addressing each of the following factors identified in **LDC** subsection 5.05.16 C.3.a.- c.:**
 - The nature and type of natural or manmade boundary, structure, or other feature lying between the proposed establishment and an existing public or private elementary school, middle school, or secondary school which is determined by the BZA to lessen the need for the total distance requirement. Such boundary, structure, or other feature may include, but is not limited to, lakes, marshes,

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nondevelopable wetlands, designated preserve areas, canals, and major rights-of-way.

- The paths of vehicular and pedestrian traffic which could be taken between the medical marijuana dispensary and the public or private elementary school, middle school, or secondary school.
 - The location promotes the public health, safety and general welfare of the community.
7. A signed and sealed survey or boundary sketch to scale, including reduced 8½ in. x 11 in. copies.
 8. **Addressing checklist.**
 9. Owner/agent affidavit as to the correctness of the application.

Completeness and Processing of Application

The Planning & Zoning Division will review the application for completeness. After submission of the completed application packet accompanied with the required fee, the **applicant** will receive a mailed or electronic response notifying the **applicant** that the petition is being processed. Accompanying that response will be a receipt for the payment and the tracking number (i.e., XX201200000) assigned to the petition. This petition tracking number should be noted on all future correspondence regarding the petition.

Notice Notification requirements are as follows. ⇔ See Chapter 8 of the Administrative Code for additional notice information.

1. **Newspaper Advertisements:** The legal advertisement shall be published at least 15 days before the advertised Hearing Examiner hearing in a newspaper of general circulation. The advertisement shall include at a minimum:
 - Date, time, and location of the hearing; and
 - Description of the proposed land uses.

Public Hearing

1. The Hearing Examiner shall hold at least 1 advertised public hearing. ⇔ See Chapter 9 of the Administrative Code for the Office of the Hearing Examiner procedures.

Decision maker

The Hearing Examiner may grant a waiver of part or the entire minimum distance requirement.

Review Process

The Planning & Zoning Division will review the application and identify whether additional materials are needed. Staff will prepare Staff Report, utilizing the criteria established in LDC section 5.05.16 C.3, to present to the Office of the Hearing Examiner for a decision.

Updated