

OPTION 2

ORDINANCE NO. 2011-_____

AN ORDINANCE OF THE CITY OF CASTLE ROCK RELATING TO LAND USE AND ZONING, AMENDING THE CITY'S COMPREHENSIVE PLAN'S LAND USE ELEMENT TO PROVIDE A POLICY FOR COMPLYING WITH NEW STATE LAWS AND ALSO AMENDING CASTLE ROCK MUNICIPAL CODE CHAPTER 17.40, C-2, HIGHWAY BUSINESS DISTRICT, TO ALLOW MEDICAL MARIJUANA COLLECTIVE GARDENS ON CERTAIN PROPERTIES SUBJECT TO SATISFYING SITING AND PERMIT CRITERIA

WHEREAS, federal law, since 1970, has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government's categorization of marijuana as having a "high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment." *Gonzales v. Raich*, 545 U.S. 1, 14 (2005), Controlled Substance Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq; and

WHEREAS, the voters of the State of Washington approved Initiative 692 (codified as RCW 69.51A in November 1998); and

WHEREAS, the intent of Initiative 692 was that qualifying "patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law," RCW 69.51A.005, but that nothing in the law "shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes." RCW 69.51A.020; and

WHEREAS, the result is that "medical marijuana" does not violate state criminal law, under certain limited conditions, but still violates federal criminal law; and

WHEREAS, currently a qualifying patient or their designated care provider are presumed to be in compliance with the quantity limitations of state Initiative 692, if they possess no more than twenty-four ounces (i.e. 1 ½ pounds) of usable and no more than fifteen plants, WAC 246-75-010; however, recently enacted ESSSB 5073 will also permit, as of July 22, 2011, qualifying patients "to create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use," provided no more than ten qualifying patients participate, a collective garden does not contain more than fifteen plants per patient up to a total of forty-five plants per garden, and the garden does not contain more than twenty-four ounces (1 ½ pounds) of useable cannabis per patient and up to a total of seventy-two ounces (4 ½ pounds) of useable cannabis, ESSSB 5073, Section 403; and

WHEREAS, RCW 69.51A.060(1) provides that it is a class 3 civil infraction to display medical cannabis in a manner or place which is open to view of the general public, which would include growing plants; and

WHEREAS, Washington’s Governor, in her partial veto letter, of SB 5073, of April 29, 2011, indicated cooperative medical marijuana organizations should be exempted from state criminal penalties “conditioned on compliance with local government location and health and safety specifications”, page 3, creating a need to balance the interests of federal law, Washington medical marijuana patients and the health, safety and welfare of the community, *Id*, page 3; and

WHEREAS, Section 1102 of ESSSB 5073 allows local jurisdictions to adopt regulations for zoning requirements, business license requirements, health and safety requirements, and business taxes; and

WHEREAS, as part of the process for the adoption of zoning regulations, the land use impacts of collective gardens must be identified; and

WHEREAS, because the land use impacts of growing marijuana in quantities allowed by the State of Washington have been experienced in other jurisdictions, the City of Castle Rock may look to the experiences of other cities and counties in drafting zoning regulations for collective gardens; and

WHEREAS, Mendocino County California has experienced significant location, health and safety problems with the cultivation of medical marijuana, including but not limited to, a distinctive odor that may be detectable far beyond property borders, medical marijuana (whether grown for medical or non-medical use) may be sold for thousands of dollars per pound, the odor can create an attractive nuisance creating a risk of burglary, robbery and armed robbery; indoor cultivation can overload standard electrical systems creating an unreasonable risk of fire; law enforcement needs to be able to readily distinguish plants growing in compliance with the laws versus those that are not; the need to provide notice to owners of the parcel upon which the plants are grown, limitation on location of the gardens, and fencing/security requirements, Mendocino County Code Chapter 9.31; and

WHEREAS, Butte County California has experienced significant location, health and safety problems with the cultivation of medical marijuana, including that marijuana plants can each yield one to two pounds of useable cannabis, that the price for a pound of useable cannabis can range from \$1,500 to \$3,000, that cultivation of marijuana within one thousand (1,000) feet of schools, school bus stops, school evacuation sites, churches, parks, child care centers or youth-oriented facilities creates unique risks that marijuana will be observed by juveniles and thus vulnerable to theft or recreational consumption, that odors can overwhelm neighbors and result in an increase in criminal activity, that inadequate security increases the risk of loitering and crime; Butte County Code Chapter 34A; and

WHEREAS, on July 11, 2011 the Castle Rock City Council adopted interim zoning regulations to address collective gardens are necessary, until the City could consider all of the land use impacts of collective gardens, draft regulations, hold hearings and adopt new regulations on the subject; and

WHEREAS, the Council heard testimony during two Public Hearings and provided staff with direction to draft regulations that comply with Sections 1101(2) and 1102(1) of ESSSB 5073;

NOW THEREFORE, the City Council of the City of Castle Rock does ordain to amend the City of Castle the Comprehensive Plan's "Land Use Element" to include the following new policy:

"The City of Castle Rock shall attempt to comply with new laws adopted by the State of Washington."

FUTHERMORE, the City Council of the City of Castle Rock does ordain to amend Castle Rock Municipal Code Chapter 17.40, C-2, Highway Business District to include the following new language:

17.40.010 Permitted Uses

(VV) Medical marijuana collective gardens as provided in Section 17.40.200 below.

17.40.200 Medical Marijuana Collective Gardens

17.40.210 Purpose

The City of Castle Rock shall regulate medical marijuana collective gardens under authority provided by RCW 69.51A in order to comply with state laws ensuring qualifying patients will have access to an adequate, safe, consistent, and secure source of medical quality cannabis. The City of Castle Rock does not condone violating federal drug laws, but finds it necessary to establish zoning controls to separate this use from incompatible uses and to also minimize potential nuisances. Nothing in this section should be misconstrued as providing permission to violate federal drug laws.

17.40.220 Definitions:

A) "Cannabis" means all parts of the plant *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, its seeds, or resin. For the purposes of this ordinance, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

(B) "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible

products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this ordinance and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

(C) "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

(D) "Collective Garden" means those gardens authorized under Section 403 of ESSSB 5073, which means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

(E) "Designated care provider" means a person who:

- (1) Is eighteen years of age or older;
- (2) Has been designated in ((writing)) a written document signed and dated by a qualifying patient to serve as a designated provider under this ordinance and RCW 69.51A; and
- (3) Is in compliance with the terms and conditions set forth in RCW 69.51A.040.

A qualifying patient may be the designated provider for another qualifying patient and be in possession of both patients' cannabis at the same time.

(F) "Indoors" means within a fully enclosed and secure structure that complies with the Washington Building Code (WBC), as adopted by the City of Castle Rock, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" by 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

(G) "Legal parcel" means a parcel of land for which one legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels shall be counted as a single parcel for purposes of this ordinance.

(H) "Medical use of cannabis" means the manufacture, production, processing, possession, transportation, delivery, ingestion, application, or administration of cannabis for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating medical condition.

(I) "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

(J) "Person" means an individual or an entity.

(K) "Personally identifiable information" means any information that includes, but is not limited to, data that uniquely identify, distinguish, or trace a person's identity, such as the person's name, date of birth, or address, either alone or when combined with other sources, that establish the person is a qualifying patient or designated provide.

(L) "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

(M) "Process" means to handle or process cannabis in preparation for medical use.

(N) "Produce" means to plant, grow, or harvest cannabis for medical use.

(O) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(P) "Qualifying patient" means a person who:

- (1)(a) Is a patient of a health care professional;
- (b) Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;
- (c) Is a resident of the state of Washington at the time of such diagnosis;
- (d) Has been advised by that health care professional about the risks and benefits of the medical use of cannabis;
- (e) Has been advised by that health care professional that he or she may benefit from the medical use of cannabis; and
- (f) Is otherwise in compliance with the terms and conditions established in RCW 69.51A.

The term "qualifying patient" does not include a person who is actively being supervised for a criminal conviction by a corrections agency or department that has determined that the terms of this ordinance and RCW 69.51A are inconsistent with and contrary to his or her supervision and all related processes and procedures related to that supervision.

(Q) "Residential treatment facility" means a facility providing for treatment of drug and alcohol dependency;

(R) "School" means an institution of learning for minors, whether public or private, offering regular course of instruction required by the Washington Education Code, or any child or day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher learning, including a community or junior college, college or university.

(S) "Terminal or debilitating medical condition" means:

- (1) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or
- (2) Intractable pain, limited for the purpose of this ordinance to mean pain unrelieved by standard medical treatments and medications; or
- (3) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or
- (4) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or
- (5) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or
- (6) Diseases, including anorexia, which result in nausea, vomiting, cachexia, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or
- (7) Any other medical condition duly approved by the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery as directed in this chapter.

(T) "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

(U) "Useable cannabis" means dried flowers of the *Cannabis* plant having a THC concentration greater than three-tenths of one percent. Useable cannabis excludes stems, stalks, leaves, seeds, and roots. For purposes of this subsection, "dried" means containing less than fifteen percent moisture content by weight. The term "useable cannabis" does not include cannabis products.

(V) "Valid documentation" means:

- (1) A statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of cannabis;
- (2) Proof of identity such as a Washington state driver's license or identicaid, as defined in RCW 46.20.035; and
- (3) In the case of a designated provider, the signed and dated document valid for one year from the date of signature executed by the qualifying patient who has designated the provider.

(W) "Youth-oriented facility" means elementary school, middle school, high school, public park, and any establishment that advertises in a manner that identifies the establishment as

catering to or providing services primarily intended for minors, or individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. This shall not include a day care or preschool facility. This definition also includes a business utilizing a permanent building or facility where children under the age of 18 years are invited onto the business premises in conjunction with such business activity and at least 50 percent of the business revenue is generated from their patronage.

17.40.230 Medical Marijuana Collective Garden Land Use Permit:

In order to site and operate a Collective Garden, the owner of the property must obtain approval from the City of a Collective Garden Land Use Permit. This requires the submission of a complete application (as described in subsection E herein), and conformance with the following requirements:

A. **Zoning Districts.** Collective Gardens, as defined in Section 2 of this Ordinance shall be allowed in the C-2, Highway Business District zoning districts at Exit 49 and no others, subject to the locational criteria set forth herein.

B. **Location and Distance Restrictions.** No collective garden, defined in Section 2 of this Ordinance shall be permitted

(1) within 300 feet of schools, churches, youth-oriented facilities, libraries or residential treatment facility as measured from edge of property line to edge of property line. See attached Exhibit B.

(2) Outdoors within one hundred feet of any occupied legal residential structure located on a separate legal parcel.

(3) In any location where the marijuana plants are visible from a public place.

C. **Ownership and Limitation on Numbers.** No more than one collective garden may be located on a legal lot of record, and the legal lot must be owned or leased to one of the members of the collective garden. A qualifying patient can not be a member of more than one collective garden, and must be a member of one collective garden for at least thirty (30) days before transferring their membership to another garden. The collective garden must maintain records of its membership for no less than three years.

D. **Fencing Requirement.** All cannabis grown outside must be fully enclosed by a secure fence at least six (6) feet in height. The fence must include a lockable gate that is locked at all times when a qualified patient or designated care provider is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.

E. **Collective Garden Land Use Permit Application.** A complete application for a Collective Garden Land Use Permit shall consist of the following:

1. The name and address of all qualifying patients applying for the permit.

2. Acknowledgement that they are responsible to possess proof of their qualifying status and a unique identifying number from the State of Washington Driver's License or Identification Card for all qualifying patient members of the collective gardens on the premises at all times, available for law enforcement;

3. A statement acknowledging that the permit applied for will be issued in conformance with the laws of the State of Washington and that such issuance does not confer upon the members of the collective garden immunity from prosecution under federal law.

4. The location of the legal lot where the cultivation collective garden will be located, by street address and tax parcel number.

5. If the collective garden is to be located outdoors, the measures to be taken to minimize odor-related complaints or a statement explaining why such measures are not necessary;

6. Either the owner of the property shall sign the application, or the person signing it must demonstrate that they have permission to sign the application on behalf of the owner (for example, a copy of the lease, which shows that the lease is for the specific purpose of operating a collective garden)

7. A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of the members and protect the premises from theft.

8. A statement describing the proposed source of power, if any, for the collective garden, the size of any such electrical service or system, and the total demand to be placed on the system by all proposed uses on site. The statement shall be forwarded to the Washington State Department of Labor and Industry for electrical permit review. The intent is to ensure sufficient electrical system exists to accommodate the new demand.

9. One reproducible copy (eight and one half inch by 11 inches or 11 inches by 17 inches) or seven oversized copies of a floor plan showing:

(A) If the collective garden is located inside a structure, then please submit a floor plan including all existing and proposed walls

(B) Disability Access. Show how area of renovation/improvement complies with disabled access requirements, including paths of travel to point of ingress/egress, restrooms, drinking fountains and public telephones.

(C) Doors. Show all door locations, fire-rating (if applicable), direction of swing, self-closing mechanism, required exit signage and lighting, etc.

(D) Cross-connection control and backflow prevention devices are required in accordance with CRMC 13.06.045. Please show plumbing specifications, such as types and locations of fixtures, drains, and backflow prevention devices.

(E) Lighting type and location of fixtures.

(F) Ventilation equipment and fixtures.

10. One reproducible copy (eight and one-half inches by 11 inches or 11 inches by 17 inches) or seven oversized copies of a plot plan showing:

- (A) All property lines, labeled with dimensions;
- (B) All existing structures;
- (C) Accessible path of travel from public sidewalks and/or parking space to collective garden; and

11. Submission of payment of a permit fee sufficient to cover the cost of all City departments investigating and processing the application in an amount that shall be set by the City Council in accordance with applicable laws and regulations.

F. Collective Garden Land Use Permit Procedure:

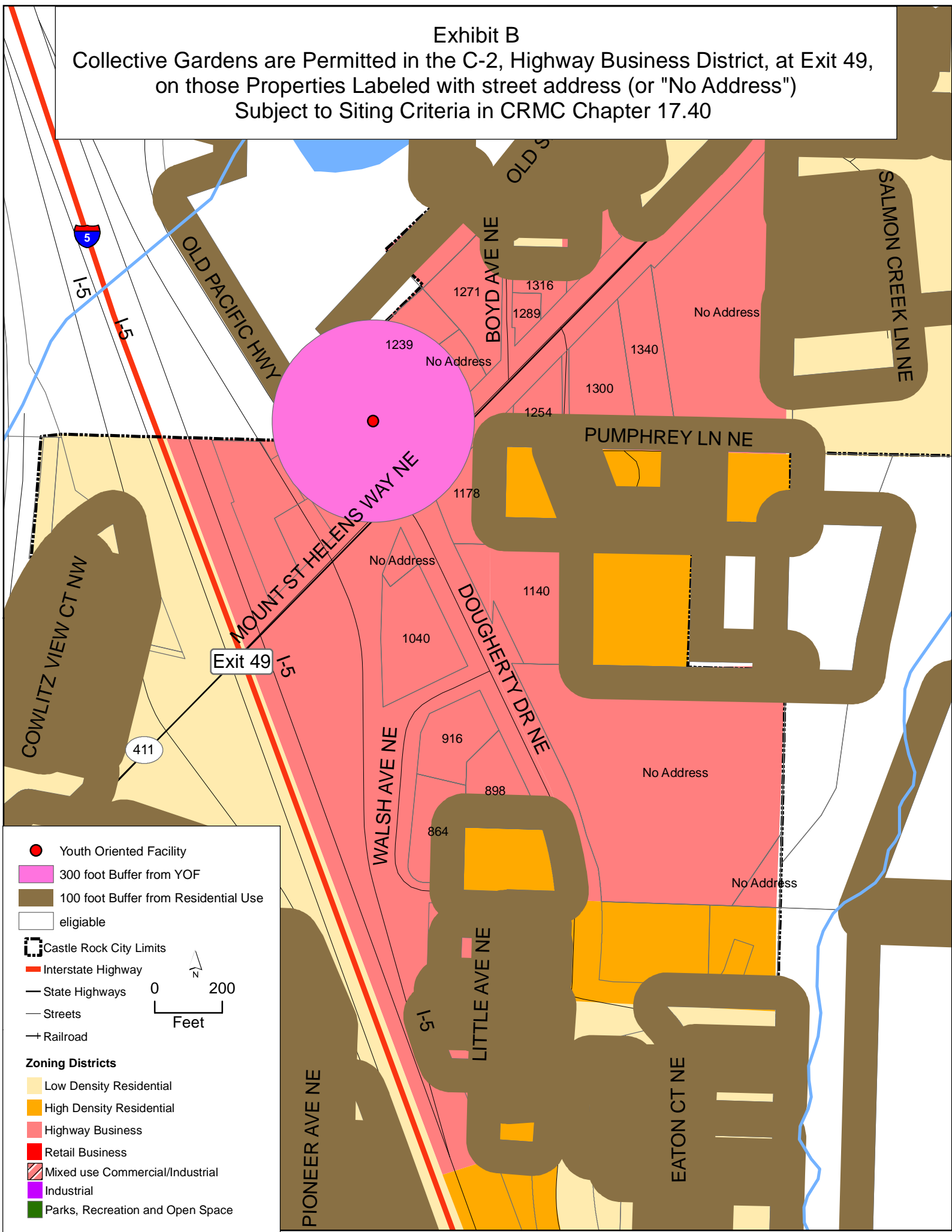
1. Within 10 working days of receipt of a complete application, the city clerk-treasurer's office shall transmit a copy of the application to the development review committee members for their department's review.
2. Within 10 working days of receipt of department comments as to the completeness of satisfying the requirements of Section 4 (A – D), the building official shall provide a written decision whether to issue the permit.
3. The property owner must sign an acknowledgement agreeing that the building official, or designee thereof, may enter the property to perform an inspection at any time. The intent is not to ensure compliance of the permit regulations.

G. Expiration of Collective Garden Land Use Permit

1. A Medical Marijuana Collective Garden Land Use Permit shall expire three hundred and sixty four (364) days from the date of issuance. Property owners wishing to continue the land use permit must submit for the permit on an annual basis. The intent is to ensure continued compliance with the conditions of permit issuance and to also ensure that the members of the collective garden are not members of any other collective.

Exhibit B

Collective Gardens are Permitted in the C-2, Highway Business District, at Exit 49,
on those Properties Labeled with street address (or "No Address")
Subject to Siting Criteria in CRMC Chapter 17.40



- Youth Oriented Facility
- 300 foot Buffer from YOF
- 100 foot Buffer from Residential Use
- eligible

- Castle Rock City Limits
- Interstate Highway
- State Highways
- Streets
- Railroad

- Zoning Districts**
- Low Density Residential
 - High Density Residential
 - Highway Business
 - Retail Business
 - Mixed use Commercial/Industrial
 - Industrial
 - Parks, Recreation and Open Space