



COMMUNITY PLANNING, DEVELOPMENT & INNOVATION

Development Services Division

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MEMO No. 1

To: City Council

Date: July 6, 2022

From: Spencer Starke, Associate Planner, CPDI

RE: Cannabis Cultivation Energy Regulation Update

In December of 2021 City Council directed Community Planning, Development, and Innovation (CPDI) staff to research and develop regulations mitigating the potential impacts of cannabis on energy consumption within Missoula. Cannabis cultivation consumes significant amounts of energy compared to other industries. Staff researched the energy impacts of cannabis cultivation and how other communities have regulated energy consumption. This research and associated recommendations were issued in a White Paper and presented to Land Use and Planning Committee on February 9, 2022 (see Attachment E White Paper). During the process for drafting the White Paper staff were made aware that Montana State Law may prohibit mandatory energy requirements.

To reduce the energy impact of cannabis cultivation, staff had initially proposed amendments to Title 5 Business Licenses and Regulation. Staff prepared a draft ordinance aligning with the White Paper recommendations. The proposed energy requirements would apply to cannabis cultivation businesses, new and existing. The initial ordinance would have made compliance with the requirements mandatory.

The draft ordinance was then sent to the Montana State Building and Commercial Measurements Bureau for review. Staff met with Eric Copeland of the bureau on April 12, 2022. Staff were informed that the regulations would not comply with Montana Code Annotated Section 50-60-102(6). Rules governing energy consumption are not permitted to require conformance, but must be voluntary and incentive-based.

Considering state law prohibits mandating energy requirements, staff have developed incentive options that would aid in the rate at which businesses opt to participate in best practices related to energy consumption and cannabis cultivation. Staff are seeking feedback from City Council to determine if Council is interested in pursuing voluntary, incentive-based energy consumption options for cannabis cultivation. If so, staff are seeking feedback on what types of incentives Council would be interested in pursuing. Note that amendments to Title 15 Buildings and Construction would be required. Depending on the incentive type, amendments to Title 5 Business Licenses and Regulation or Title 20 Zoning Code may be required.

Below are the proposed voluntary energy consumption methods that cultivators can opt into:

In order to be eligible for the incentive in (CODE SECTION), indoor cannabis cultivation facilities must meet one (1) of the three (3) following options.

1. Photosynthetic Photon Efficacy (PPE)
 - a. All lighting equipment used for cultivating cannabis must have a minimum of 1.9 PPE.

- b. For greenhouses with a minimum u-factor of 0.7, the lighting equipment used for cultivating cannabis must have a minimum of 1.7 PPE.
2. All lighting equipment used for cannabis cultivation appears on the DesignLights Consortium's Qualified Product List for Horticultural Lighting or a similar list approved by the City.
3. Eighty-five percent (85%) of the electricity used by the facility shall be produced from renewable energy. This option may be met through any combination of the following:
 - a. The renewable fraction of the energy supplied by the cultivation facility's electricity provider (e.g., utility or cooperative);
 - b. On-site renewable energy;
 - c. Off-site renewable energy, which may be obtained through participation in a community solar program or equivalent approved by the City. Purchase of unbundled Renewable Energy Certificates (RECs) does not count toward compliance with this section.

The incentives proposed are structured to encourage participation by either implementing monetary relief, or by giving cultivation operations more canopy area than what the underlying zoning would allow. The following are the incentive options that staff have developed:

1. Zoning Relief:

Currently, Zoning Code applies cannabis cultivation use classifications based on the canopy area. Zoning does not limit canopy area within Limited and Heavy Industrial districts and restricts canopy area in Business, Commercial, and Limited-Industrial Residential zoning districts which permit less intensive uses. To incentivize compliance with the proposed energy consumption treatments, City Council could allow cannabis cultivators to increase the amount of canopy area beyond what is currently permitted in zoning. This would allow cultivators to increase production while decreasing the net energy consumption of the operation. This strategy for implementing an incentive program that is compliant with state requirements would require amendments to Title 20 Zoning Code and would not require the establishment of an additional fee or funding

However, the current limits on canopy area in different Title 20 zoning districts were structured to be comparable to the intensity of the existing permitted uses within each zoning district. In 2021, staff amended Title 20 to implement the canopy area restrictions in order to mitigate negative impacts of cannabis cultivation in particular areas. The potential to increase impacts besides energy consumption in these areas is expanded by permitting the expansion of canopy area.

2. Amend Zoning:

Inversely, and to address the potential to increase impacts resulting from zoning relief, zoning could be amended to reduce the permitted canopy area unless the applicant opts into the voluntary energy conservation incentives. The updated zoning would address all impacts initially conceived when the cannabis zoning regulations were proposed and adopted. This incentive option would ensure other negative impacts, such as affect on urban form in commercial corridors, would not be increased. Implementing this incentive would require revisions to Title 20 and would create non-conformities for existing cannabis businesses, though it does not require the establishment of an additional fee or funding.

3. Cannabis Cultivation Fee:

This option would create a special cannabis cultivation business licensing fee and waive the fee if the applicant opts to implement energy conservation methods. The fee would be a straightforward way for cultivators to be incentivized to opt into energy conservation. The fee would need to be significant to create enough of a relief to spur cultivators to opt-in, because the difference in cost between traditional lighting and LED lighting can be in the tens of thousands of dollars.

To address energy consumption and cannabis cultivation, while meeting the states mandated incentive structure staff has developed the above explained incentive proposal. These incentives provide some motivation for cultivators to voluntarily comply with the energy conservation options proposed.