

## Memorandum

**To:** Planning and Zoning Commission Initials  
**From:** Sally Vecchio, Ass't Town Mgr/ Community Deve. \_\_\_\_\_  
**Date:** January 26, 2011  
**Re:** Resolution 11-02 Recommending Approval of Amendments to Title 7 of the Avon Municipal Code.

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### Summary

Whenever changed conditions or changes in public policy are required to advance the general welfare, the Town Council may, by ordinance, amend the Avon Development Code. Any such amendment may be initiated by the Town Council, property-owner within the Town, or registered elector within the Town.

The Town Council initiated three text amendments to the Avon Development Code and authorized Staff to propose other corrections to the Code where identified. The process of considering these amendments requires a hearing by the Planning and Zoning Commission followed by a hearing and passage of an ordinance by the Council.

**Resolution 11-02 Recommending Approval of Amendments to Title 7 of the Avon Municipal** is attached as Attachment A.

### Background

The Avon Development Code was adopted on Nov 16, 2010. Since then, staff discovered three errors in the code that will require a text amendment to correct:

- 1) Amend **§7.16.020(d)(2), Mailed Notices**, to clarify that mailed notice is required for the following applications: Zoning Change, PUD, Subdivision, Special Review Use, and Variance.
- 2) **Ordinance 10-12, prohibiting medical marijuana businesses**. Sections 5, 6 and 7 of this Ordinance originally amended Title 17 (Zoning) of the AMC, which was subsequently repealed by Ordinance 10-14. The following provisions from Ordinance 10-12 will be added to the Development Code:
  - a) The definition of Medical Marijuana Business to **§7.08.010, Definitions**.
  - b) New **subsection (n) to §7.04.040, Interpretation**, regarding conflict with other laws.
  - c) New section **§7.24.090 Use Regulations**, prohibiting medical marijuana businesses in the Town of Avon.
- 3) **Ordinance 08-04 Historic Landmark Designation**. Originally amended Title 17 (Zoning) of the AMC, which was subsequently repealed by Ordinance 10-14. The regulations with amendments, will be added to the Development Code as follows:
  - a) Historic Preservation Advisory Committee (purpose and duties) to **Section §7.12 Development Review Authority**.
  - b) The process of reviewing alterations to Historic Landmarks to **§7.50, Development Review Procedures**.
  - c) The "Secretary of the Interior Standards" deleted as the criteria for reviewing alterations to historic landmarks.

- d) Property-owner consent required as a condition of nominating a structure as an historic landmark.
- e) Historic Landmark nomination process revised to require recommendation by the Historic Preservation Advisory Committee to the Town Council for a public hearing and final determination.

### **Review Criteria**

An application to change the Development Code text must meet the criteria set forth in Section 7.16.040(c) of the Avon Development Code:

- The text amendment promotes the health, safety, and general welfare of the Avon Community;
- The text amendment promotes or implements the goals and policies of the Avon Comprehensive Plan;
- The text amendment promotes or implements the purposes stated in this Development Code; or
- The text amendment is necessary or desirable to respond to changed conditions, new planning concepts, or other social or economic conditions.

Amendments to the Development Code are approved by ordinance. The process of considering these amendments requires a hearing by the Planning and Zoning Commission followed by a hearing and passage of an ordinance by the Council.

### **Recommendation**

The proposed amendments to the text of the Development Code are consistent with the review criteria set forth in Section 7.16.040(c) of the Avon Development Code. Staff therefore recommends that the Planning and Zoning Commission approve **Resolution 11-02: Recommending Approval of Amendments to Title 7 of the Avon Municipal Code.**

**TOWN OF AVON, COLORADO  
PLANNING COMMISSION RESOLUTION 11-02  
SERIES OF 2011**

**A RESOLUTION RECOMMENDING APPROVAL OF AMENDMENTS TO TITLE 7  
OF THE AVON MUNICIPAL CODE**

**WHEREAS**, the Town Council initiated an amendment to the text of the Town of Avon zoning code in accordance with Section 17.28.020 of the Avon Municipal Code; and

**WHEREAS**, the Planning and Zoning Commission of the Town of Avon held a public hearing on February 1, 2011, after posting notice of such hearing in accordance with the requirements of the Avon Municipal Code, and considered all comments provided before taking action to make a recommendation to the Town Council; and

**WHEREAS**, it is the Planning and Zoning Commission's opinion that the health, safety and welfare of the citizens of the Town of Avon would be enhanced and promoted by the adoption of these text amendments to the Town of Avon zoning code; and

**WHEREAS**, the Planning and Zoning Commission finds that the application to change the Development Code text meets the criteria set forth in Section 7.16.040(c) of the Avon Development Code.

**NOW THEREFORE, BE IT RESOLVED**, that the Planning and Zoning Commission hereby recommends that the Town Council of the Town of Avon approve the following amendments to Title 7 of the Avon Municipal Code:

**Section 1. Recitals Incorporated.** The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

**Section 2 Amendment to Chapter 7.24 Use Regulations. Section 7.24.040 Table of Allowed Uses** of the Avon Development Code is hereby designated a prohibited use.

“Table 7.24.1 Allowed Uses

Use Category	Use Type	
Retail	Medical Marijuana	

**Section 3. Amendment to Chapter 7.08 Definitions. Chapter 7.08.010 Definitions** of the Avon Development Code is amended by enacting the following definitions:

***“Medical Marijuana Business*** means the use of a property, or portion thereof, for the cultivation, manufacture, storage, distribution, acquisition or sale of marijuana, including the use of property for Medical Marijuana Centers, manufacturing of Medical Marijuana-Infused Products, or Optional Premises, as such terms are defined by Colorado Revised Statute §12-43.3-104, as may be amended, regardless of whether any such use described herein is for profit or not for profit.

***Historic Preservation Advisory Committee*** means a five-person advisory committee appointed by the Town Council to make recommendations and findings regarding historic sites, structures or features in the Town of Avon.

***Historic and/or Cultural Landmark*** means a site and/or structure designated as an historic landmark by the Historic Preservation Advisory Committee and approved by the Town Council within the Town of Avon.”

**Section 4. Amendment to Chapter 7.24 Use Regulation.** Section 7.24.010(c) of the Avon Development Code is amended to read as follows:

**“7.24.010(c) Prohibited Uses.** A blank cell indicates that the use is prohibited in the respective zoning district. Medical Marijuana Business is a prohibited use in all zone districts. Any use of property which violates local, state or federal law is prohibited.”

**Section 5. Amendment to Section 7.12 Development Application Review Procedures,** Title 7, Avon Development Code, is amended by the addition of a Chapter 7.12.070 as follows:

**7.12.070. Historic Preservation Advisory Committee**

**(a) Establishment and Purpose.** There is hereby established a historic preservation advisory committee of the Town. The purposes of the historic preservation advisory committee (HPAC) are as follows:

- (1)** To promote the health, safety and welfare of the residents of the Town of Avon through the regulation of historic and/or cultural sites and structures;
- (2)** Foster civic pride in the beauty and accomplishments of the past;
- (3)** Protect and enhance the Town’s attraction to tourists and visitors and increase the quality of life of the residents; and,
- (4)** Promote the use of historical or architectural sites, structures and objects for the education and welfare of the residents of the town; and,
- (5)** Promote and encourage private ownership, stewardship and utilization of such sites, structures and objects; and,

- (6) Integrate historic and/or cultural preservation with the Town of Avon Comprehensive Plan; and,
- (7) Maintain the Town's unique character by recognizing the importance of preservation and renewing the Town's legacy for present and future generations; and,
- (8) Discourage the unnecessary demolition of historic and/or cultural resources; and,
- (9) Provide incentives for the continued use of historic and/or cultural resources and facilitate their appropriate stewardship and reuse; and,
- (10) Encourage the conservation of historic settings and landscapes; and
- (11) Promote retention of historical integrity in the context of proposed land use.

(b) **Duties.** The HPAC shall have the following functions and duties:

- (1) Recommend Historic and/or Cultural Landmarks which meet the Landmark Designation Criteria to the Town Council;
- (2) Review applications for any permit which includes the exterior alteration, relocation or removal of a site or structure designated as a Historic and/or Cultural Landmark and make recommendations to the Planning and Zoning Commission.

**Section 6. Amendment to Section 7.16 Development Review Procedures**, Title 7, Avon Development Code, is amended by the addition of a Chapter 7.50 as follows:

**7.50 Historic and/or Cultural Preservation Designated**

This section sets forth procedures for reviewing proposed Historic and/or Cultural Landmark Designations in the Town.

(a) **Review Procedures.** After receiving approval from the property owner(s), the Historic Preservation Committee shall recommend Historic and/or Cultural Landmarks to the Town Council. A public hearing is required with Town Council. The recommendation shall identify the criteria forming the basis of the recommendation, and shall include all pertinent information related to the site or building supporting the designation.

The Town Council will approve or disapprove Historic and/or Cultural Landmark designation after public hearing, at which the owner of the site or structure and all interested persons shall

have an opportunity to be heard. A majority decision of the Town Council is required for nomination.

**(b) Review Criteria.** A site or structure may be eligible for Historic and/or Cultural Landmark designation if it has been in existence for at least 50 years or meets any of the following criteria:

(1) Historic significance:

- (i) Has character or is a point of interest that reflects the heritage and political, economic and/or social history or cultural development of the Town, the state or the nation; and,
- (ii) Is associated with historical persons or groups or represents important events in national, state or local history; and,
- (iii) Is associated with an important individual or group who contributed in significant ways to the political, social and/or cultural life of the community; and,
- (iv) Has prehistoric interest or information.

(2) Architectural significance:

- (i) Characterizes a style associated with a particular era; and,
- (ii) Has a strong or unique relationship to other areas potentially eligible for preservation; and,
- (iii) Is architecturally unique or innovative; and,
- (iv) Has visual symbolic meaning or appeal for the community or, due to its unique location or singular characteristics, represents established and familiar visual features of the neighborhood or community.

**(c) Incentives.** The benefits of Historic Landmark designation may include the following:

- (1) Partial waiver of building permit fees;
- (2) Local property tax credits;
- (3) Preservation, maintenance or relocation assistance, and other incentives as deemed necessary by the Town Council; *and*

- (4) Other appropriate incentives, also as determined by the Town Council.

**(d) Review of plans for sites and structures having designation.** Any application for any permit which includes the exterior alteration, relocation or removal of a site or structure designated as a Historic and/or Cultural Landmark must be reviewed by the Planning and Zoning Commission for recommendation of approval or disapproval to the Town Council on the basis of the following criteria. The Town Council shall approve or disapprove the application after public hearing at which the landowner and interested persons have an opportunity to be heard.

- (1) Criteria for alteration of a site or structure:

- (i) Whether the architectural or historical character will itself be materially altered so as to negatively impact the Historical Landmark; and,
- (ii) Whether the architectural style and arrangement and the texture of the exterior surface materials of the existing structure and the proposed alteration appropriately relate to each other and to other structures in the vicinity; and,
- (iii) Whether the alteration will negatively change or destroy the exterior architectural features and details of the structure; and,
- (iv) The effect of the proposed alteration on the protection, enhancement, perpetuation and use of the Historic Landmark.

- (2) Criteria for relocation of a structure:

- (i) Significance of the original site; and,
- (ii) Whether the structure can be rehabilitated or used on its original site consistent with the reasonable and beneficial use of the property; and,
- (iii) Whether the proposed site is compatible with or detracts from the importance of the Historic Landmark; and,
- (iv) Whether the structure can be moved without causing significant damage to its physical integrity; and,
- (v) Whether the relocation of the structure is necessary to prevent undue hardship on the property owner.

- (3) Criteria for removal of a structure:

- (i) Whether the structure presents an imminent hazard that cannot otherwise be properly mitigated; and,

- (ii) Whether the structure can reasonably be rehabilitated and maintained in its present location and the significance of the original site; and,
- (iii) Whether relocation of the structure is reasonably possible or practical; and,
- (iv) Whether the structure can be rehabilitated or used on its original site consistent with the reasonable and beneficial use of the property; and,
- (v) Whether the removal of the structure is necessary to prevent undue hardship on the property owner.

**(e) Standards governing approval of development plans for sites and structures having designation.** Any approved development plan including the alteration, relocation or removal of a Historic and/or Cultural Landmark shall be deemed to incorporate the following standards except to the extent they are determined not to be applicable by the Town Council:

- (1) The Historic and/or Cultural Landmark shall be continue to be used in a manner consistent with its original purpose or a compatible purpose, so long as such use does not violate any of the provisions of this Code; and,
- (2) The historic character of the Historic and/or Cultural Landmark shall be maintained by avoiding the removal or alteration of features important to such character; and,
- (3) The use of original materials is encouraged. Distinctive and unique features, finishes, materials and examples of craftsmanship should be retained and preserved. Repairs and replacement of such features should match the original in color, shape, texture and design. Replacements should be fully documented with pictorial or physical evidence and a copy of such evidence filed with the Town; and,
- (4) Where possible, additions and expansions shall be differentiated from the existing structure so as to protect the Historic Landmark's historic integrity. Additions and expansions shall also be undertaken in such a manner that their removal in the future would not destroy the form or integrity of the original structure.

**(f) Removal of Historic Landmark designation.** The Town Council, after public hearing at which the owner of the Historic and/or Cultural Landmark and interested persons shall have an opportunity to be heard, may remove Historic and/or Cultural Landmark designation from a site or structure, based upon one or more of the following findings:

- (1) The Historic and/or Cultural Landmark designation creates undue hardship for the owner;

- (2) The structure is an imminent hazard to the health and safety of the public despite the owner's efforts to properly maintain it; and,
- (3) The structure is structurally unsound despite the owner's efforts to properly maintain it.

**Section 7. Amendment to Section 7.16.020(d)(2) Mailed Notice.** Section 7.16.020(d)(2) Mailed Notice of the Avon Development Code shall be amended by the addition of the following sentence at the end of the paragraph to read as follows:

“Mailed notice shall be required for zoning amendments, subdivision, planned unit development and variance applications.”

**Section 8. Amendment to Chapter 7.28.** Chapter 7.28 of the Avon Development Code is amended by enacting Section 7.28.110 Water Tap Fees to read as follows:

“7.28.110 Water Tap Fees. The Water Rate Schedule and Tap Fee Schedule as set forth in **Appendix 13-A Water Rate Schedule/Tap Fee Schedule** is hereby adopted.”

**Section 9. Codification Amendments.** The codifier of the Town's Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Avon Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

**Section 10. Severability.** If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

**Section 11. Effective Date.** This Ordinance shall take effect seven days after public notice following final passage in accordance with Section 6.4 of the Avon Home Rule Charter.

**Section 12. Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

**Section 13. No Existing Violation Affected.** Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

**Section 14. Publication by Posting.** The Town Clerk is ordered to publish this Ordinance by posting notice of adoption of this Ordinance on final reading by title in at least three public places within the Town and posting at the office of the Town Clerk, which notice shall contain a statement that a copy of the ordinance in full is available for public inspection in the office of the Town Clerk during normal business hours.

**ADOPTED THIS 1<sup>st</sup> DAY OF FEBRUARY, 2011**

**Signed:**

**Attest:**

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Chris Green, Chair

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Scott Prince, Secretary

## PZC WORKSHOP 2– AVON DEVELOPMENT CODE

Topics: Development Review Procedures, Zone Districts and Use Regulations.

Meeting Date: FEBRUARY 1, 2011

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### A. CHAPTER 7.16 - DEVELOPMENT REVIEW PROCEDURES

#### 1. REVIEW AUTHORITY (Table 7.16-1)

##### Applications Requiring PZC Approval

- Development and Design Review (formally Sketch/Final).
- Alternative Equivalent Compliance
- Special Review Uses
- Variance
- **Location and Extent**
- **1041 Regulations**

**Green Highlights**  
New Applications and  
Review Process  
Processes

- **Applications Requiring PZC Recommendation and TC Approval**

- Rezoning
- PUD
- Code Text Amendments
- Comprehensive Plan Amendments
- **Major Development Plans in Town Core**
- Major and Minor Subdivisions
- Annexation
- Right of Way Vacation
- Vested Property Rights

- **Administrative Reviews**

- **Administrative Subdivisions**
- Minor Development Plans
- **Minor Amendments**

#### 2. GENERAL PROCEDURES AND REQUIREMENTS

##### a. Pre-Application Requirements

- Required conference with staff before submittal

##### b. Application Submittal

- Required studies and reports
- Concurrent reviews permitted
- Fees

##### c. Application Processing

- Determination of Completeness – **10 days from submittal**
- Referral to Other Agencies - **14 days or 21 days**
- Staff Review and Report to PZC or TC
- Required Processing – application may be withdrawn by Director if Applicant fails to respond to staff comments for period of **4 months**.

##### d. Noticing Requirements

- Consistent requirements for publishing, mailing and posting

##### e. Public Hearing Procedures and Requirements

- Applications must be scheduled for public hearing **w/in 75 days** of determination of completeness. May be continued for 35 days or up to 95 days with Applicant consent.

**New Standardized  
Processes & Timelines**

**New Review Criteria  
(General & Specific)**

**Application Requirements**

**f. Review and Decision**

- Review Criteria
- Authority to Require Additional Studies
- Written findings required
- Conditions of Approval may be required

**g. Appeal Process**

**B. CHAPTER 7.20 - ZONE DISTRICTS & OFFICIAL ZONING MAP**

**1. ZONE DISTRICTS AND DISTRICT REGULATIONS**

- Remove density requirements in commercial zones
- More density requires more water rights
- Decreased setback requirements
- Added Employee Housing Mitigation for development exceeding max lot coverage

**2. RETIRED DISTRICTS**

- Remain on properties currently zoned R-HC and SC.
- Other properties cannot be rezoned to those districts.

**3. PLANNED UNIT DEVELOPMENT OVERLAY ZONE (PUDs)**

- Underlying zone district controls uses and dimensional requirements
- Eligible for projects with unique situation, confers substantial benefit to Town and/or incorporates creative site design.
- Required for approval of Vested Property Rights

**C. CHAPTER 7.24 - USE REGULATIONS**

**1. PERMITTED USES**

- More mix of uses
- Out-dated uses deleted

**2. SPECIAL REVIEW USES**

**3. TEMPORARY USES**