



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: Jan. 15, 2019

AGENDA TITLE: Introduction, first reading and consideration of a motion to order published by title only Ordinance 8307 amending Sections 6-14-8, “Requirements Related to Operation of Medical Marijuana Businesses,” and 6-16-8, “Requirements Related to Operation of Recreational Marijuana Businesses,” to reverse the addition of marijuana centers and marijuana infused product manufacturers from the renewable energy offset requirements and coordinating amendments to Sections 6-14-9 and 6-16-9, “Right of Entry - Records to be Maintained”; and setting forth related details.

PRESENTER/S

Jane S. Brautigam, City Manager
Steve Catanach, Director of the Department of Climate Initiatives
Kathy Haddock, Assistant City Attorney
Kendra Tupper, Chief Sustainability and Resilience Officer
Carolyn Elam, Energy Program Strategy Manager
Mishawn Cook, License Manager
Elizabeth Vasatka, Sustainability Coordinator

EXECUTIVE SUMMARY

City staff is providing recommended changes to the medical and recreational marijuana ordinances pertaining to the energy reporting and electricity offset requirements that apply to licensed marijuana businesses.

Per the Boulder Municipal Code 6-14-9(g) and 6-16-9(g) all licensed marijuana businesses must report energy use and per 6-14-8(i) and 6-16-8(i) businesses must directly offset 100 percent of their electricity consumption through the purchase of renewable energy through a verified subscription in a community solar garden, renewable energy generated onsite, or an equivalent that is subject to approval by the city. On [March 7, 2017](#), City Council approved the Energy Impact Offset Fund (EIOF) as an electricity offset option.

Based on the on-going energy use data collection, invoicing for the EIOF and an industry engagement process, city staff is recommending that only licensed marijuana cultivation businesses be subject to the energy reporting and offset requirements. Non-cultivation marijuana businesses are comprised of retail centers, infused products manufacturing facilities and testing facilities. The reasons for these ordinance revisions are the following:

- All licensed marijuana businesses are subject to these requirements, however, almost all of the industry's energy use (97 percent) can be attributed to cultivation businesses.
- Non-cultivation businesses represent more than half of marijuana licenses, but only three percent of the energy used by the industry.
- Energy reporting, data collection, quality control, billing and enforcement associated with the offset requirement represents a significant administrative burden for businesses and for city staff. In the case of non-cultivation businesses, administrative costs are estimated to exceed the amount of funds being collected.
- By imposing these requirements only on licensed cultivation businesses, City Council still meets its original intent of having the new industry report energy use and mitigate its carbon emissions impact.
- During July and August 2018, city staff and its consultants performed industry specific engagement around the offset requirements and options for compliance. The feedback received was that these requirements impose an undue administrative and financial burden, especially for the non-cultivation businesses.
- Reducing the administrative burden on city staff can enable staff to dedicate time and focus to work with the cultivators to develop more offset options and energy efficiency best practices in collaboration with Boulder County.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Introduction, first reading and consideration of a motion to order published by title only Ordinance 8307 amending Sections 6-14-8, "Requirements Related to Operation of Medical Marijuana Businesses," and 6-16-8, "Requirements Related to Operation of Recreational Marijuana Businesses," to reverse the addition of marijuana centers and marijuana infused product manufacturers from the renewable energy offset requirements and coordinating amendments to Sections 6-14-9 and 6-16-9, "Right of Entry - Records to be Maintained"; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** – These ordinance revisions would reduce the administrative and financial burden on licensed marijuana centers, infused product (MIPs) manufacturing facilities and testing businesses.

- **Environmental** – Requiring only marijuana cultivation businesses to offset 100 percent of their electricity achieves the intent of the original requirement, as non-cultivation marijuana businesses generate only three percent of the annual EIOF revenue. Sufficient funds will still be available to implement projects to offset the impact of the industry as a whole. Additionally, many of these businesses lease space in buildings subject to the city’s Building Performance Ordinance, so will be reducing their GHG impact through the required upgrades covered under that ordinance. Similarly, existing advising services and rebates offered through the Partners for a Clean Environment (PACE) program are well-suited to support non-cultivators in improving the efficiency of their operations.
- **Social** – These ordinance revisions do not hinder the overall intent of having the marijuana businesses offset their carbon emission impact. Cultivation businesses paying into the fund still generate 97 percent of the revenue, allowing the goal of using the fund to develop and implement renewable energy projects to still happen. The funding will still be used to reduce GHG emissions that will create a cleaner and healthier environment for the entire community.

OTHER IMPACTS

- **Fiscal** – Non-cultivation facilities represent more than half of the administrative burden, but only three percent of the EIOF funds being collected. These revisions will utilize limited city staff and resources in the most fiscally efficient manner and eliminate a requirement whose administrative costs outweigh the offset payments collected.
- **Staff time** – City staff time is allocated to marijuana licensee communication, data collection and quality control, and coordination with licensing and enforcement efforts. The city has an Intergovernmental Agreement (IGA) with Boulder County financial services staff¹ to invoice and perform accounts receivable payments into city’s EIOF. If the ordinance revisions are approved, staff could potentially streamline workloads and reduce the administrative burden on the fund by having it administered through the city’s financial system.

COUNCIL FEEDBACK

At the July 9, 2018 City Council study session, the Marijuana Advisory Panel (MAP) and its work was discussed, including whether the MAP should continue meeting or if its work was completed. A few topics were brought up and council directed staff to bring three issues back to the MAP in 2018 and 2019 for discussion. One of the issues identified was the energy offsite requirement and associated EIOF, and specifically, how requirements were applied to all marijuana businesses. City staff met with the MAP in October and November 2018 to discuss this topic. While other issues remain for future discussion regarding the use of the EIOF and the fee structure, consensus was reached regarding limiting the energy reporting and offset requirements to just cultivation facilities.

¹ March 7, 2017 council adopted an IGA, which outlines that the Boulder County Financial Services Office provide financial assistance for the city’s EIOF. The term of the IGA was one year with the option to extend.

PUBLIC FEEDBACK

In June 2018, city staff hosted a marijuana stakeholder workshop to begin engagement efforts on the eventual use of the EIOF. During July and August 2018, city staff and consultants then engaged licensed marijuana businesses in bilateral meetings to discuss their interest in energy efficiency and renewable energy projects and to solicit input on ways the EIOF could be used to provide benefit back to the industry. Staff also met with Boulder County's EIOF Steering Committee to review their activities and to solicit input into the city's strategy.

BACKGROUND

Boulder's marijuana industry accounts for two percent of the community's total energy use and results in more than 14,000 metric tons of GHG emissions annually. In an effort to mitigate the carbon impact this new industry would have on the community's ability to achieve its GHG goals, Boulder Municipal Code §§6-14-8(i) and 6-16-8(i) were adopted with requirement that cultivation facilities directly offset 100 percent of their electricity consumption either through on-site solar, subscriptions to solar gardens or an equivalent that is subject to approval by the city. By Ordinance 7929, adopted on November 12, 2013, the requirement was extended to all marijuana businesses. On [November 10, 2015](#), City Council added an energy reporting requirement to the ordinance to create better transparency into the industry's energy usage and to facilitate better compliance with the ordinance requirements. On [March 7, 2017](#) City Council approved the establishment of the EIOF to serve as the equivalent offset option for businesses who were unable to directly offset their electricity use through on-site solar or solar garden subscriptions. Licensed businesses began reporting their electricity use in 2017 and businesses began paying EIOF fees in 2018.

Also on [March 7, 2017](#), City Council approved an IGA with Boulder County so as to leverage existing resources offered by the County to administer the EIOF rather than creating, managing and administering a separate city fund. Approximately seven percent of the fees collected are currently retained by the County to cover their administrative costs for these services.

ANALYSIS

Energy Requirement Compliance and Reporting

Prior to 2016, compliance for the electricity offset requirements was managed through audits only and there was no means to evaluate the industry's total energy usage and GHG impact short of auditing every single business and compiling that data. With the revision to the ordinance to require energy reporting, city staff was able to work with the licensed marijuana industry to utilize ENERGY STAR Portfolio Manager to report their energy use. One advantage of Portfolio Manager is that Xcel Energy can "push" facility data into individual accounts when requested to do so, which reduces data entry efforts by the facility owner and/or their employees. However, this process is not fully reliable, so licensees must conduct quality checks on the data. Complications have also arisen due to Xcel Energy's privacy rules requiring some licensees to manually enter their data into the system.

While there are three options available for meeting the offset requirement, technical and economic barriers limit the marijuana industry's ability to procure on-site solar and solar garden subscriptions, making the EIOF the chosen option for most of the licensed businesses. Specific barriers include:

- Reliance on leased space –The payback periods for solar and energy efficiency upgrades are frequently longer than the lease terms for many marijuana businesses. Businesses are unlikely to see the return on their investment within the term of their lease. Building owners lack motivation to make investments like on-site solar in their properties.
- Federal standing and impact on credit – The credit standing of the industry limits their access to capital. Even if solar garden capacity existed, garden providers will not contract with marijuana businesses due to their credit standing.
- Solar garden capacity – Even if marijuana businesses could subscribe to solar gardens, the limited number of new gardens being built would be insufficient to meet the needs of the industry. While a viable option for marijuana businesses, Xcel Energy's Renewable Connect program limited subscription amounts to 20% of a business's electricity use.
- Energy intensity of the industry – Most cultivation facilities lack adequate roof or ground space to install enough solar to cover their electricity needs.

Currently, only three marijuana facilities offset their electricity use through on-site solar or a solar garden subscription (Xcel Energy's Renewable Connect program) and in each case, only a portion of their electricity use is offset. Thus, all licensed facilities rely on the EIOF to meet some or all offset requirements, and city and Boulder County staff must work with all of them to complete invoicing and enforce payments.

The following summarizes the average impact and fees collected per business for a six-month billing period, based on business type:

	Total Number of Facilities ²	Average Electricity Used per Facility (kWh)	Average Emissions Impact per Facility (metric tons of CO ₂)	EIOF Fees Invoiced (per billing period)
Cultivation Facilities	44	275,852	164	\$5,710
Non-cultivation Facilities	25	14,209	8	\$294

Based on this analysis, city staff estimates that the labor costs for non-cultivation facilities to complete reporting, verify accuracy of Xcel Energy data and process payments, result in a disproportionately high cost to them based on their minimal environmental impact as compared to cultivation facilities. Similarly, administrative costs for city and county staff for managing reporting, invoicing and enforcing payments negates the benefits of any fees collected from the non-cultivation facilities.

² A single facility may represent multiple marijuana licenses.

Administrative Costs

EIOF fees are collected through a semi-annual billing process jointly administered by city staff and Boulder County staff. The following outlines the current roles and responsibilities of each agency:

	Roles and Responsibilities
City of Boulder	<ul style="list-style-type: none">• Overall communications• Technical support• Data analysis and review• Fee determination• Payment plan authorizations
Boulder County	<ul style="list-style-type: none">• Invoicing• Accounts receivable• Funds administration

The IGA with Boulder County was established with the intent of leveraging the County's existing resources as the city gained experience with its EIOF. Three billing cycles have now been completed. The recommendation to conclude the IGA and to have city staff assume full administration of the EIOF is based on the following:

- Approval of the recommended ordinance change will reduce the marijuana-specific invoicing requirements by more than half
- Much of the administrative burden is already associated with the roles and responsibilities held by the city, such that the incremental cost associated with city staff assuming full administrative responsibilities would be less than the administrative fees currently paid to the County
- The city has needs to utilize the EIOF beyond just licensed marijuana businesses (e.g. SmartRegs, voluntary programs) that will require greater flexibility in billing and administration
- The County has indicated that there would be no staffing impact associated with concluding the IGA

Continued Industry Engagement

The recommended ordinance changes are the result of consensus agreement between city staff and the MAP and is consistent with other feedback staff has received from the industry through its industry engagement efforts. City staff will continue to work with the MAP and engage the industry on the following open items:

- If council concurs with staff's recommendations to modify the ordinance, handling of past and open invoicing for non-cultivation facilities
- Energy Impact Offset Fee setting and considerations for increased renewables in the electricity grid mix
- Role of the industry and MAP in guiding how the EIOF will be used

City Council Action

City staff's recommendation is for council consideration to only apply the energy offset requirements to licensed marijuana cultivation facilities. This will continue to apply the

energy reporting and electricity offset requirements to the primary energy users in the marijuana industry per the intent of the requirements. Additionally, this change would eliminate the administrative and financial burden to all licensed facilities except the biggest energy users. Furthermore, relinquishing these requirements on centers, MIPs and testing facilities will reduce the burden for the business owners and city and Boulder County staff by reducing nearly half of the workload that only recoups three percent of the fund's revenue.

The city works closely with the county and the marijuana industry and this change would allow more alignment with both jurisdictions' requirements. Working together promotes synergies and will allow staff to focus on developing cultivation best practices in promoting sustainability and energy efficiency as the industry continues to mature.

Approval of staff's recommendation will be effective immediately –This change will be in effect immediately, which means that any billing that hasn't occurred for electricity used will only be issued to cultivation businesses. The next billing cycle scheduled for April 2019 for electricity offsets will only be issued to cultivation facilities.

NEXT STEPS

- City staff will continue to discuss EIOF issues with the MAP in 2019 and will report back to council.
- City staff will develop communications to the marijuana businesses regarding council's decision.
- City staff will work internally with our Finance Department to bring the EIOF invoicing and account payables in-house.

ATTACHMENTS

Attachment A: Proposed Ordinance 8307

ORDINANCE 8307

AN ORDINANCE AMENDING SECTIONS 6-14-8 “REQUIREMENTS RELATED TO OPERATION OF MEDICAL MARIJUANA BUSINESSES” AND 6-16-8 “REQUIREMENTS RELATED TO OPERATION OF RECREATIONAL MARIJUANA BUSINESSES” TO REVERSE THE ADDITION OF MARIJUANA CENTERS AND MARIJUANA INFUSED PRODUCT MANUFACTURERS FROM THE RENEWABLE ENERGY OFFSET REQUIREMENTS AND COORDINATING AMENDMENTS TO SECTIONS 6-14-9 AND 6-16-9 “RIGHT OF ENTRY – RECORDS TO BE MAINTAINED”; AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
COLORADO:

Section 1. Section 6-14-8, shall be amended as follows:

6-14-8. – Requirements Related to Operation of Medical Marijuana Businesses.

...

- (i) Renewable Energy Requirements. A medical marijuana cultivation facility~~business~~ shall directly offset one hundred percent of its electricity consumption through a verified subscription in a Community Solar Garden, or renewable energy generated onsite, or an equivalent that is subject to approval by the city. For medical marijuana businesses licensed by the city on October 22, 2013, this requirement shall apply at the time of renewal of the medical marijuana business license following October 22, 2013.

...

Section 2. Section 6-16-8, shall be amended as follows:

6-16-8. – Requirements Related to Operation of Recreational Marijuana Businesses.

...

- (i) Renewable Energy Requirements. A marijuana cultivation facility~~business~~ shall directly offset one hundred percent of its electricity consumption through a verified subscription in a Community Solar Garden, or renewable energy generated onsite, or an equivalent that is subject to approval by the city. For a recreational marijuana center that has converted

pursuant to Subsection 6-16-3(f) or co-located pursuant to Subsection 6-16-3(g), or a marijuana-infused product manufacturer licensed by the city on October 22, 2013, this requirement shall apply at the time of renewal of the marijuana business license following October 22, 2013.

...

Section 3. Section 6-14-9(g) shall be amended as follows:

6-14-9. - Right of Entry - Records to Be Maintained.

...

- (g) Reporting of Energy Use and Compliance with Renewable Energy Requirements. The records to be maintained by each medical marijuana cultivation facility~~business~~ and submitted to the city shall include, without limitation, records showing on a monthly basis the use and source of energy and any renewable energy generated onsite or through a Community Solar Garden subscription. Such records shall include all statements, reports, or receipts to verify the items included in the report of the business. By application for a medical marijuana business license from the city for a cultivation facility, the medical marijuana cultivation facility~~business~~ grants permission to providers of the energy or other renewable energy acquisition program to disclose the records of the business to the city. Medical marijuana businesses shall maintain records showing compliance with the renewable energy requirements in this chapter.

Section 4. Section 6-16-9(g) shall be amended as follows:

6-16-9. - Right of Entry - Records to Be Maintained.

...

- (g) Reporting of Energy Use and Compliance with Renewable Energy Requirements. The records to be maintained and submitted to the city by each recreational marijuana cultivation facility~~business~~ shall include, without limitation, records showing on a monthly basis the use and source of energy and any renewable energy generated onsite or through a Community Solar Garden subscription. Such records shall include all statements, reports, or receipts to verify the items included in the report of the business. By application for a recreational marijuana business license from the city for a cultivation facility, the recreational marijuana cultivation facility~~business~~ grants permission to providers of the energy or other renewable energy acquisition program to disclose the records of the business to the city. Recreational marijuana businesses shall maintain records showing compliance with the renewable energy requirements in this chapter.

1 Section 5. This ordinance shall apply to any future billings. As a result, dispensaries and
2 marijuana-infused manufacturers and testing facilities do not owe and will not be billed the
3 energy offset requirement for the period beginning July 1, 2018.

4
5 Section 6. This ordinance is necessary to protect the public health, safety, and welfare of
6 the residents of the city, and covers matters of local concern.

7 Section 7. The city council deems it appropriate that this ordinance be published by title
8 only and orders that copies of this ordinance be made available in the office of the city clerk for
9 public inspection and acquisition.
10

11 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
12 TITLE ONLY this 15th day of January 2019.

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15 _____
Suzanne Jones,
Mayor

16 Attest:

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18 _____
Lynnette Beck,
19 City Clerk
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READ ON SECOND READING, PASSED AND ADOPTED this ____ day of February
2019.

Suzanne Jones,
Mayor

Attest:

Lynnette Beck,
City Clerk