

MEETING DATE: August 20, 2019
TO: City Council
DEPARTMENT: City Manager's Office
DIRECTOR: Steve Adams
PRESENTER: Alan Krcmarik, Chief Financial Officer; Justine Bruno, Assistant to the City Manager



AGENDA ITEM:

ORDINANCE CONCERNING RECREATIONAL AND MEDICAL MARIJUANA AND SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF LOVELAND AT THE CITY'S REGULAR ELECTION TO BE HELD ON NOVEMBER 5, 2019, TWO BALLOT ISSUES, ONE PERMITTING RETAIL AND MEDICAL MARIJUANA DISPENSARIES, CULTIVATION, MANUFACTURING, AND TESTING AND RESEARCH FACILITIES IN THE CITY AND THE SECOND IMPOSING AN EXCISE TAX OF UP TO 15% WHEN UNPROCESSED RETAIL MARIJUANA IS FIRST SOLD OR TRANSFERRED BY A RETAIL MARIJUANA CULTIVATION FACILITY AND IMPOSING AN ADDITIONAL SALES TAX OF UP TO 15% ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS

RECOMMENDED CITY COUNCIL:

A Motion To Adopt, On Second Reading, Ordinance No. 6323 Concerning Recreational And Medical Marijuana And Submitting To The Registered Electors Of The City Of Loveland At The City's Regular Election To Be Held On November 5, 2019, Two Ballot Issues, One Permitting Retail And Medical Marijuana Dispensaries, Cultivation, Manufacturing, And Testing And Research Facilities In The City And The Second Imposing An Excise Tax Of Up To 15% When Unprocessed Retail Marijuana Is First Sold Or Transferred By A Retail Marijuana Cultivation Facility And Imposing An Additional Sales Tax Of Up To 15% On The Sale Of Retail Marijuana And Retail Marijuana Products

OPTIONS:

| COUNCIL ACTION OPTIONS | CONSEQUENCE |
|-----------------------------------|--|
| Approve the Motion | Loveland voters will determine if the City should allow retail and medical marijuana cultivation, manufacturing, research, testing, and sales and will be asked to approve an excise tax and additional sales tax. |
| Deny the motion or take no action | The measures will not be referred to appear on the ballot and would only become ballot questions through a petition process. |
| Adopt a Modified Action | A modified ballot measure(s) will appear on the November 2019 Ballot. |
| Refer back to Staff | Referring the measures back to staff for additional changes to the proposed ballot language may create a delay that will prevent the measures from appearing on the November 2019 ballot. |

SUMMARY:

Purpose: The purpose of the ballot measures is to authorize the cultivation, manufacturing, research and testing, and sale of medical and retail marijuana in Loveland and to approve an excise tax on the first sale of unprocessed retail marijuana and an increased sales tax on retail marijuana.

Objective: The objective is to allow Loveland voters to determine if there is support to authorize medical and recreational marijuana and to apply a special sales and excise tax on retail marijuana at rates not to exceed 15.0% in Loveland.

Impact: If the ballot measure to allow marijuana within the City is successful, the City Council will begin the process of passing regulations governing those businesses, and if the measure to collect tax revenue on retail marijuana in addition to the City's existing 3.0% sales tax rate is passed, City Council will determine the exact tax rate up to 15% will be collected.

Council Follow-up: N/A

BUDGET IMPACT:

| | |
|-----------------------------|---|
| Budgetary Impact? | Funds Impacted: Not applicable |
| | Source(s) of Funding: Not applicable |
| Grant Funding? | Grantor(s) (State or Fed): Not applicable |
| | City Matching Requirement: Not applicable |
| | On-going or One-Time: Not applicable |
| | If On-going, when does the grant sunset? Not applicable |
| Additional Comments: | Not applicable |

COUNCIL OR BOARD/COMMISSION REVIEW:

Type of Meeting: 1) City Council Study Session, July 9, 2019 (**Attachment 3**)
2) City Council Regular Meeting, August 6, 2019 (**Attachment 4**)

Resulting Vote: 1) Not applicable
2) The first reading of this ordinance passed on the regular agenda with a 5-2 vote.

Discussion: 1) During the Study Session meeting, staff presented information and explored the potential impacts of authorizing sale of marijuana in Loveland. The presentation reviewed

related topics such as land use, regulatory options, economic impacts, financial impacts, health issues and costs, and public safety concerns. The meeting also allowed for public testimony, which included fifteen community members that spoke, with approximately half expressing comments in favor of marijuana in Loveland and the other half expressing comments against authorizing marijuana in Loveland. A majority of City Council Members directed staff to move forward with crafting ballot language for the November 5, 2019 election.

2) Council discussed the proposed ballot language and requested that the date for allowing marijuana and collecting the tax be removed. Council discussed whether other cities collect a higher tax on marijuana products, and although Council was not certain that 15% tax was the right amount, Council would have flexibility to set the tax rate at any level below 15%. Lastly, Council members further requested that the ballot measure be divided into two questions: one to allow marijuana and one approving the excise and additional sales tax.

BACKGROUND:

History: Council directed staff to begin studying the potential impacts of authorizing marijuana in Loveland with a Rule of 4 request, issued in April, 2019. Staff brought forward a presentation to address some of the potential impacts in the areas of land use, licensing, economic development, financial, health, and public safety. The presentation covered how neighboring communities are regulating marijuana activity; and industry representative Billie-Jo Naysmith, covered licensing options for localities and industry-related employment. Additionally, staff discussed taxation options; taxation rates in neighboring communities; crime data from the 8th Judicial District; and marijuana-related offenses in Loveland. The entire discussion encompassed over five hours of dialogue, and at the conclusion of the meeting, City Council directed staff to draft ballot language for the November 5, 2019 election.

Following Council's direction, staff prepared materials that identified expenses and revenues for local communities that have authorized marijuana. Four communities were highlighted in the presentation (Aurora, Berthoud, Fort Collins, and Longmont) and were selected based on the number of staff they employ to manage marijuana activity, the projected expense of those positions, annual revenue from medical and retail sales, and the number of establishments within their boundaries. Additionally, these communities, along with Thornton and Boulder, were analyzed to estimate the range of direct tax revenue associated with each medical or retail dispensary. All of this data was prepared to help City Council understand potential costs and associated revenues of authorizing marijuana in Loveland.

Staff, with the assistance of external legal counsel, as amended by Council, has revised the ordinance presented on first reading and prepared draft ballot language for two ballot measures: one that would authorize medical and retail marijuana in Loveland and one that would authorize an additional sales tax and excise tax up to 15%. The first ballot question would authorize an excise tax on the first sale of unprocessed retail marijuana at a maximum of 15.0%; and sets the additional sales tax rate on retail marijuana at a maximum of 15.0% (in addition to the City's existing 3.0% sales tax). The other ballot question authorizes the cultivation, manufacturing, testing, and sale of marijuana. As requested by Council, the effective date for allowing marijuana and taxation has been removed in the revision. If the ordinance is approved, two ballot questions would be placed on the November 5, 2019 ballot.

Outreach and Notification Efforts: The City and the Reporter Herald both publicized the July 9, 2019 meeting through social media, the newspaper, and other channels. The July 9, 2019

Study Session allowed for public comment, which is not typical for Study Session meetings. Public comment will be considered at first and second reading of the draft ballot language as well.

Please see **Attachment 2** for citizen follow up, and **Attachment 1** for staff's presentation of this item.

Conditions met/or anticipated: Not applicable

Start and End Dates (of studies, design, construction, or in service/operational): Not applicable

ANALYSIS TABLE:

Yes: No:

LIST OF ATTACHMENTS:

Ordinance

Attachment 1 - Presentation

Attachment 2 - Citizen Follow-up

Attachment 3 - August 6, 2019 AIR

Attachment 4 - AIR from Study Session, dated July 9, 2019

FIRST READING: August 6, 2019

SECOND READING: August 20, 2019

ORDINANCE NO. 6323

AN ORDINANCE CONCERNING RECREATIONAL AND MEDICAL MARIJUANA AND SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF LOVELAND AT THE CITY'S REGULAR ELECTION TO BE HELD ON NOVEMBER 5, 2019, TWO BALLOT ISSUES, ONE PERMITTING RETAIL AND MEDICAL MARIJUANA DISPENSARIES, CULTIVATION, MANUFACTURING, AND TESTING AND RESEARCH FACILITIES IN THE CITY AND THE SECOND IMPOSING AN EXCISE TAX OF UP TO 15% WHEN UNPROCESSED RETAIL MARIJUANA IS FIRST SOLD OR TRANSFERRED BY A RETAIL MARIJUANA CULTIVATION FACILITY AND IMPOSING AN ADDITIONAL SALES TAX OF UP TO 15% ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS.

WHEREAS, the City Council received information from staff, members of the public, law enforcement, and industry business owners on July 9, 2019 and decided to allow the citizens of Loveland to decide whether to allow retail and medical marijuana dispensaries, cultivation, manufacturing and testing and research facilities within the City of Loveland; and

WHEREAS, marijuana may be taxed up to fifteen (15%) per cent with a vote of the citizens of Loveland at a regular election both by the imposition of an excise tax on the first sale of marijuana and an additional sales tax on marijuana; and

WHEREAS, a majority of the City Council finds that the voters should decide whether to allow retail and medical marijuana dispensaries, cultivation, manufacturing, testing and research facilities in the City and for the City Council to regulate such activities by ordinances passed by the City Council; and

WHEREAS, the City of Loveland's next regular election is scheduled for November 5, 2019; and

WHEREAS, the City Council must fix the ballot titles for these measures, pursuant to Colorado Revised Statutes § 31-11-111, to assure the titles are not confusing, do not conflict with other measures on the ballot in the November 5, 2019 election, and correctly and fairly express the true intent and meaning of the measures; and

WHEREAS, the City Council finds that ballot measures should be placed on the ballot at the next regular election asking whether to permit retail and medical marijuana dispensaries, cultivation, manufacturing, and testing and research facilities in the City and whether to impose an excise tax of up to 15% when unprocessed retail marijuana is first sold or transferred by a retail marijuana cultivation facility and an additional sales tax of up to 15% on the sale of retail marijuana and retail marijuana products.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY

OF LOVELAND, COLORADO:

Section 1. That there shall be submitted to a vote of the registered electors of the City of Loveland on the ballot at the City's regular election to be held on November 5, 2019 two ballot issues. The first asking whether to permit retail and medical marijuana dispensaries, cultivation, manufacturing, and testing and research facilities in the City, the second asking to impose an excise tax of up to 15% when unprocessed retail marijuana is first sold or transferred by a retail marijuana cultivation facility and an additional sales tax of up to 15% on the sale of retail marijuana and retail marijuana products subject to regulations to be passed by the City Council.

Section 2. That, in addition to any other City ballot issue which may be approved by the City Council, the ballot for the City's regular municipal election on November 5, 2019, to be conducted as part of a coordinated mail ballot election with Larimer County, shall include the title and submission clause to authorize the sale of medical and retail marijuana within the City as follows:

AUTHORIZING RETAIL AND MEDICAL MARIJUANA DISPENSARIES, CULTIVATION, MANUFACTURING, AND RESEARCH AND TESTING FACILITIES TO BE LOCATED WITHIN THE CITY.

SHALL THE CITY COUNCIL BE AUTHORIZED TO PERMIT RETAIL AND MEDICAL MARIJUANA DISPENSARIES, CULTIVATION FACILITIES, AND MANUFACTURING, AND RESEARCH AND TESTING FACILITIES TO BE LOCATED IN THE CITY SUBJECT TO REGULATIONS TO BE PASSED BY THE CITY COUNCIL?

Section 3. That, in addition to any other City ballot issue which may be approved by the City Council, the ballot for the City's regular municipal election on November 5, 2019, to be conducted as part of a coordinated mail ballot election with Larimer County, shall include the title and submission clause for an increase in the sales and excise tax for marijuana as follows:

AUTHORIZING AN ADDITIONAL SALES TAX ON THE SALE OF RETAIL MARIJUANA OF UP TO 15% AND AN EXCISE TAX ON THE FIRST SALE OF MARIJUANA OF UP TO 15%.

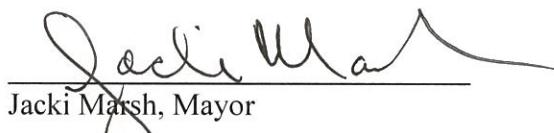
SHALL CITY OF LOVELAND TAXES BE INCREASED BY \$ 1.5 MILLION ANNUALLY IN THE FIRST FULL FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED ANNUALLY THEREAFTER BY IMPOSING AN EXCISE TAX OF UP TO 15% WHEN UNPROCESSED RETAIL MARIJUANA IS FIRST SOLD OR TRANSFERRED BY A RETAIL MARIJUANA CULTIVATION FACILITY AND BY IMPOSING AN ADDITIONAL SALES TAX OF UP TO 15% ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, WITH THE RATE OF EITHER OR BOTH TAXES BEING ALLOWED TO BE DECREASED OR INCREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF EITHER ADDITIONAL TAX DOES NOT EXCEED 15%, AND WITH THE RESULTING TAX REVENUE BEING ALLOWED TO BE COLLECTED AND SPENT NOTWITHSTANDING ANY LIMITATIONS PROVIDED BY LAW?

Section 4. That the City Clerk is hereby directed to certify no later than September 6, 2019, to the Larimer County Clerk and Recorder the above ballot issues for the Larimer County Coordinated Mail Ballot Election to be held on November 5, 2019.

Section 5. That pursuant to C.R.S. § 1-11-203.5, any election contest arising out of a ballot issue or ballot question concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

Section 6. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this 20th day of August, 2019.



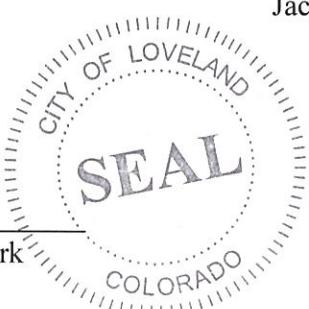
Jacki Marsh, Mayor

ATTEST:



Patti Garcia

Patti Garcia, City Clerk



APPROVED AS TO FORM:



Deputy City Attorney

Ordinance 6323

I, Patti Garcia, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on August 6, 2019 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on August 10, 2019 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on August 24, 2019.



Patti Garcia
CITY OF LOVELAND
SEAL
COLORADO
City Clerk

Effective Date: September 3, 2019



BALLOT LANGUAGE: MARIJUANA

ALAN KRCMARIK & JUSTINE BRUNO
AUGUST 20, 2019

TONIGHT'S

AGENDA

1

CHANGES FROM 1ST READING

2

BALLOT QUESTION LANGUAGE

3

LOVELAND TAX IMPLICATIONS

4

TIMELIINE & NEXT STEPS



— WHAT CHANGED FROM FIRST READING



TWO BALLOT QUESTIONS

- Whether to authorize medical and retail dispensaries, cultivation, manufacturing, research and testing
- Excise Tax up to 15.0% and Sales Tax up to 15.0%



EFFECTIVE DATE REMOVED

- January 1, 2021 effective date removed from ballot question and ordinance language
- Allows the City to move forward faster, but not without City Council-approved regulations



ESTIMATED TAX IN FIRST YEAR LOWERED

- Proposed \$4.4M at first reading
- Lowered to \$1.5M to reflect competitive tax rates



MARIJUANA

BALLOT QUESTIONS (IN ORDER OF APPEARANCE)

QUESTION – TAXATION

- Imposing an Excise Tax, up to 15.0% when unprocessed Retail Marijuana is first sold or transferred by a retail marijuana cultivation facility.
- Imposing an additional Sales Tax, up to 15.0% on the sale of Retail Marijuana and Retail Marijuana Products.

QUESTION – AUTHORIZING RETAIL & MEDICAL MARIJUANA

- Permitting Retail and Medical Marijuana Dispensaries, Cultivation, Manufacturing, and Testing and Research Facilities in the City.



BALLOT QUESTIONS

Council sets Excise Tax rate on
Retail Marijuana Cultivation only



SHALL CITY OF LOVELAND TAXES BE INCREASED
BY **\$1.5 MILLION** ANNUALLY IN THE FIRST FULL
FISCAL YEAR AND BY SUCH AMOUNTS AS ARE
RAISED ANNUALLY THEREAFTER BY IMPOSING AN
**EXCISE TAX OF UP TO 15% WHEN UNPROCESSED
RETAIL MARIJUANA IS FIRST SOLD OR
TRANSFERRED BY A RETAIL MARIJUANA
CULTIVATION FACILITY AND BY IMPOSING AN
ADDITIONAL SALES TAX OF UP TO 15% ON THE
SALE OF RETAIL MARIJUANA AND RETAIL
MARIJUANA PRODUCTS, WITH THE RATE OF
EITHER OR BOTH TAXES BEING ALLOWED TO BE
DECREASED OR INCREASED WITHOUT FURTHER
VOTER APPROVAL** SO LONG AS THE RATE OF
EITHER TAX ADDITIONAL **DOES NOT EXCEED 15%**,
AND WITH THE RESULTING TAX REVENUE BEING
ALLOWED TO BE COLLECTED AND SPENT
NOTWITHSTANDING ANY LIMITATIONS PROVIDED
BY LAW?

Council sets an additional Sales
Tax rate to be competitive, not to
exceed 15%



Council may set the rate below the
maximum rate of 15% without
further voter approval



Allows both retail and medical: sales,
cultivation, manufacturing, and testing



SHALL THE CITY COUNCIL BE AUTHORIZED TO
PERMIT **RETAIL AND MEDICAL MARIJUANA
DISPENSARIES, CULTIVATION FACILITIES, AND
MANUFACTURING, AND RESEARCH AND TESTING**
FACILITIES TO BE LOCATED IN THE CITY SUBJECT
TO REGULATIONS TO BE PASSED BY THE CITY
COUNCIL?

BALLOT LANGUAGE

THE WHY

SET TAX RATE UP TO **15.0%**?

- Taxation rates (Excise or Sales) cannot be increased beyond 15.0%
- Proposed rate provides maximum flexibility for Council
- Setting at the maximum negates the need for further ballot initiatives
 - Each election costs about **\$60,000**
- Council sets tax rates to be competitive

SET REVENUE AT **\$1.5M** IN YEAR 1?

- TABOR requires first-year revenue to be specified in ballot language
- If revenue collections exceed \$1.5M, refunds must be issued
- Refund process would include a sales tax holiday for dispensaries
- Change from \$4.4M at 1st reading to \$1.5M at 2nd reading, reflects Council feedback on expected taxation rates and number of facilities



BREAKDOWN

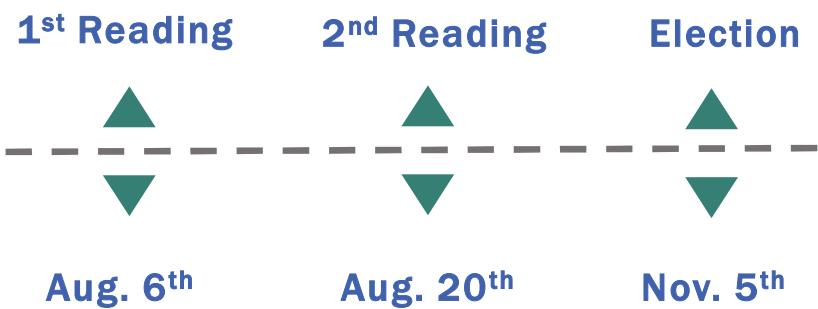
LOVELAND TAX IMPLICATIONS

- Current State Tax Rate
- Current City Tax Rate
- Current County Tax Rate
- Proposed Ballot Tax Rates

MEDICAL 6.7%**RETAIL CULTIVATION 15.0% - 30.0%****RETAIL SALES 18.8% - 33.8%****2.9% STATE SALES****15.0% STATE EXCISE****15.0% STATE SALES****- *10.0% LOCAL SHARE BACK
OF TOTAL COLLECTIONS****3.0% CITY SALES*****UP TO 15.0% CITY EXCISE*****3.00% CITY SALES****+ *UP TO 15.0% CITY SALES****0.8% COUNTY SALES****N/A****0.8% COUNTY SALES****6.7% SALES TAX****15.0% - 30.0% EXCISE TAX****18.8% - 33.8% SALES TAX**

* Indicates tax revenue received by Loveland

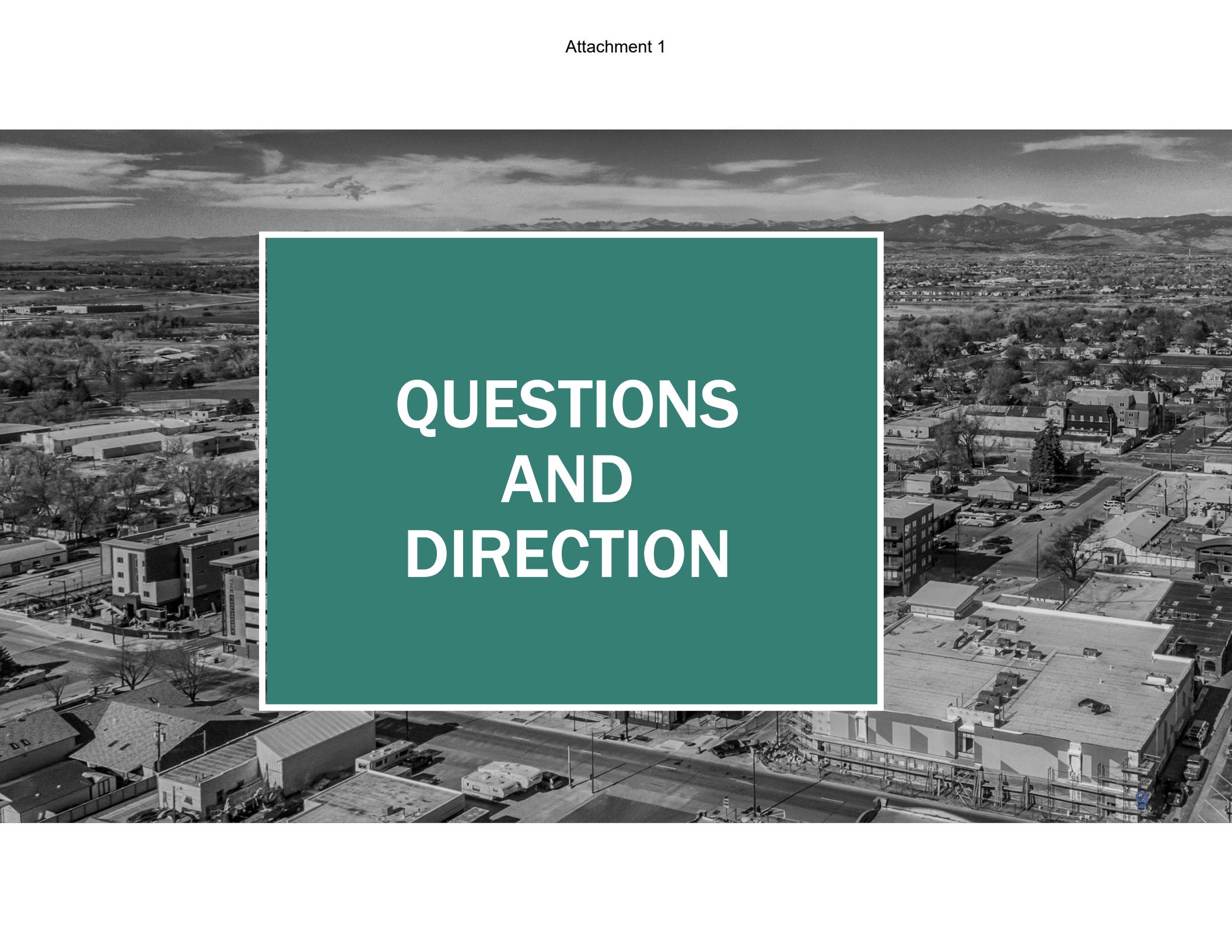
Major Milestones Moving Forward



NEXT STEPS

- ▶ Community Engagement, Outreach, & Research
- ▶ Municode Changes & UDC Changes Proposed
- ▶ Marijuana Ordinances Codified
- ▶ Marijuana Cultivated, Manufactured, Tested, Researched, and Sold in Loveland





QUESTIONS AND DIRECTION