

AMENDED ORDINANCE O-2014-27

AN ORDINANCE REPEALING DIVISION 16 OF ARTICLE III OF CHAPTER 13 OF THE CODE OF ORDINANCES OF THE CITY OF DURANGO, AND ENACTING A NEW DIVISION 2 OF ARTICLE VIII OF SAID CHAPTER 13 PERTAINING TO MEDICAL MARIJUANA, AND DECLARING AN EFFECTIVE DATE

WHEREAS, the voters of Colorado approved Amendment 20 at the 2000 general election, which was subsequently codified as Section 14 of Article XVIII of the Colorado Constitution, and which authorizes the medical use of marijuana by persons in Colorado suffering from debilitating medical conditions; and

WHEREAS, as a result of modifications to Federal law enforcement policy concerning the prosecution of Federal marijuana violations in States which have legitimized the use of marijuana for medical purposes, medical marijuana centers have increased within the State of Colorado, as well as other states that have adopted constitutional provisions authorizing the medical use of marijuana; and

WHEREAS, the City Council has previously adopted Amended Ordinance O-2010-13, which enacted Division 16 of Article III, Chapter 13 of the Code of Ordinances of the City of Durango providing regulatory provisions pertaining to medical marijuana dispensaries within the City of Durango; and

WHEREAS, House Bill 10-1284, signed into law by the Governor on June 7, 2010, enacted Title 12, Article 43.3 of the Colorado Revised Statutes (the "Colorado Medical Marijuana Code"), which established a dual licensing framework for medical marijuana facilities, introduced new terminology with respect to such facilities, significantly restricted the types of licenses that may be issued within the State of Colorado, and provided for subsequent rule-making authority in favor of the Colorado Department of Revenue to implement the legislation; and

WHEREAS, on November 6, 2012, the voters of Colorado approved Amendment 64, which amended Article XVIII of the Colorado Constitution regarding personal use and regulation

of recreational marijuana, creating a limited exception from criminal liability under Colorado law: and

WHEREAS, on May 28, 2013, the governor signed House Bill 13-1317 into law enacting Title 12, Article 43.4 of the Colorado Revised Statutes (the “Colorado Retail Marijuana Code”), which regulates and creates a licensing framework for Retail Marijuana Stores, Retail Marijuana Cultivation Facilities, Retail Marijuana Products Manufacturing Facilities, or Retail Marijuana Testing Facilities, collectively referred to as “Retail Marijuana Establishments; and

WHEREAS, a revision of the regulations governing medical marijuana concurrently with the adoption of regulations governing recreational marijuana is necessary and advisable for purposes of making such regulations consistent, where appropriate; and

WHEREAS, public hearing has heretofore been held pursuant to notice, and the Council has concluded, subsequent to said hearing, that the repeal of Division 16 of Article III of Chapter 13 of the Code of Ordinances of the City of Durango, and the enactment of a new Division 2 of Article VIII of Chapter 13 of said Code pertaining to medical marijuana would be in the best interests of the citizens of the City of Durango;

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

Section 1. That Division 16 of Article III of Chapter 13 of the Code of Ordinances of the City of Durango should be and the same is hereby repealed in its entirety.

Section 2. That Division 2 of Article VIII of Chapter 13 of the Code of Ordinances of the City of Durango should be and the same is hereby enacted and adopted, in its entirety, as follows:

ARTICLE VIII. MARIJUANA LICENSES

Division 2. Medical Marijuana

Sec. 13-201. Legislative intent and purpose.

(a) Legislative Intent: The City Council intends to regulate the use, acquisition, production and distribution of medical marijuana in a manner consistent with Article XVIII, Section 14 of the Colorado Constitution (the “Medical Marijuana Amendment”).

(1) The Medical Marijuana Amendment to the Colorado Constitution does not provide a legal manner for patients to obtain medical marijuana unless the patient grows the marijuana or the marijuana is grown by the patient’s primary caregiver.

(2) House Bill 10-1284, signed by the Governor on June 7, 2010, enacts Article 43.3 of Title 12, Colorado Revised Statutes, (the “Colorado Medical Marijuana Code”) which imposes statewide regulations pertaining to the use, acquisition, production, sale and distribution of medical marijuana and marijuana-infused products within the State of Colorado.

(3) Nothing within this section is intended to promote or condone the production, use, sale or distribution of medical marijuana other than in compliance with applicable state law.

(b) Purpose: The purpose of this Division 2 is to implement the Medical Marijuana Amendment in a manner consistent with Article 43.3 of Title 12, Colorado Revised Statutes, to protect the public health, safety and welfare of the residents and patients of the City by prescribing the manner in which medical marijuana businesses can be conducted within the City. Further, the purpose of this section is to:

(1) Provide for the safe sale and distribution of marijuana to patients who qualify to obtain, possess and use marijuana for medical purposes under the Medical Marijuana Amendment.

(2) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, neighborhood and patient safety, security for businesses and their personnel, and other health and safety concerns.

(3) Promote high quality neighborhoods by limiting the concentration of any one type of business in specific areas.

(4) Impose fees to cover the direct and indirect cost to the City of licensing and regulating medical marijuana businesses.

(5) Adopt a mechanism for monitoring compliance with the provisions of this Division 2.

(6) Create regulations that address the particular needs of patients and residents of the city and coordinate with laws enacted by the state that pertain to the issue.

(7) Facilitate the implementation of the Medical Marijuana Amendment without exceeding the authority granted by such Amendment.

Sec. 13-202. Definitions.

The following words and phrases used in this Division 2 shall have the following meanings unless the context clearly indicates otherwise:

Addiction recovery facility shall mean a facility that provides short-term overnight stays that provides for the treatment or counseling of persons having drug or alcohol abuse problems under the supervision of professional health care or social services providers.

Applicant means a person who has submitted an application to the Durango Local Licensing Authority pursuant to this Division, which application has not been approved or denied by the Authority.

Advertise, advertising or advertisement means the act of drawing the public's attention, whether through print, signs, telephonic, electronic, wireless or digital means, to a Medical Marijuana Business in order to promote the sale of Medical Marijuana by the business.

Business manager means the individual(s) designated by the owner of a Medical Marijuana Business who are registered with the City as the person(s) responsible for all operations of the business during the owner's absence from the business premises.

Co-located marijuana business means a medical marijuana business that has a license pursuant to this Division 2 of Article VIII, that is permitted by the owner of the building and all applicable laws, to divide the licensed Medical Marijuana Business to allow for both a Medical Marijuana Business and a Retail Marijuana Establishment, as a separate business premise with separate licenses from the City, within the same footprint and owned by the same person(s) or entity.

Colorado Medical Marijuana Code shall mean Article 43.3 of Title 12, C.R.S., as the same may be hereafter amended, and any other rules or regulations promulgated thereunder.

Distribute or distribution shall mean the actual, constructive or attempted transfer, delivery, sale or dispensing of medical marijuana to another, with or without remuneration.

Good cause, for purposes of denial of an initial, renewal, or reinstatement of a license application, or for the imposition of disciplinary action against an existing licensee shall mean:

- a. The Licensee or Applicant has violated, does not meet, or has failed to comply with any of the terms, conditions of this Division 2, or provisions of the Colorado Medical Marijuana Code, any rules promulgated pursuant thereto, or any other supplemental relevant state or local law, rule, or regulation;
- b. The Licensee or Applicant has failed to comply with any special terms or conditions that were placed upon the license pursuant to an order of the State Licensing Authority or the Durango Local Licensing Authority or any other local entity with jurisdiction; or
- c. The Licensee's Licensed Premises have been operated in a manner that adversely affects the public health, safety or welfare of the immediate neighborhood in which the establishment is located.

License means to grant a license or registration pursuant to the Colorado Medical Marijuana Code and this Division 2 for a Medical Marijuana Center.

Licensed premises means the premises specified in an application for a license pursuant to this Division 2 and the Colorado Medical Marijuana Code that is owned by or in possession of the Licensee and within which the Licensee is authorized to manufacture, distribute or sell Medical Marijuana in accordance with the provisions the Colorado Medical Marijuana Code and this Division 2.

Licensee shall mean the Medical Marijuana Business named on the Medical Marijuana Business License, and all individuals named in the initial Medical Marijuana Business license application, or individuals later submitted to and approved by the City, including without limitation, owners business managers, financiers, and individuals owning any part of an entity that holds a financial or ownership interest in the Medical Marijuana Business.

Local Licensing Authority shall mean the Durango Local Licensing Authority established and governed by Article VIII of Chapter 5 of this Code.

Marijuana for purposes of this Article shall have the same meaning as more fully defined in any applicable state or local law or regulation.

Marijuana business shall mean any medical marijuana business as defined in this Division 2, or a Retail Marijuana Business as defined in Division 1 of this Article VIII.

Medical Marijuana shall have the same meaning as set forth in C.R.S., §12-43.3-104(7).

Medical Marijuana Business shall mean and refer to a person holding a medical marijuana center license, as defined in C.R.S., §12-43.3-402. The term “medical marijuana business” shall not include the private possession, production, distribution and medical use of marijuana by an individual patient or an individual caregiver for one patient in the residence of the patient or caregiver to the extent permitted by Article XVIII, Sec. 14 of the Colorado Constitution or any other applicable state law or regulation.

Medical Marijuana Center shall have the same meaning as set forth in C.R.S., §12-43.3-104(8).

Medical Marijuana Infused Product shall have the same meaning as set forth in C.R.S., §12-43.3-104(9).

Medical use shall have the same meaning as is set forth in Article XVIII, Sec. 14(1)(d) of the Colorado Constitution, or as may be more fully defined under any applicable state law or regulation.

Optional premises shall have the same meaning as set forth in C.R.S., §12-43.3-104(11).

Patient shall have the same meaning as is set forth in Article XVIII, Sec. 14(1)(d) of the Colorado Constitution, or as may be more fully defined under any applicable state law or regulation.

Person shall mean a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer or employee thereof.

Premises means a distinct, definite location which may include a building, a part of a building, a room, or any other definite contiguous area.

Preschool means a facility that provides preschool programs and services to the School District under the Colorado Preschool Program Act to a majority of the children who attend or are enrolled in that facility.

Primary Caregiver shall have the same meaning as is set forth in Article XVIII, Sec. 14(1)(d) of the Colorado Constitution and C.R.S., §25-1.5-106, or as may be more fully defined in any applicable state law or regulation.

Residential child care facility shall have the same meaning as set forth in C.R.S., § 26-6-102(8).

School means a public or private licensed preschool, a public or private or charter elementary, middle, junior high or high school, vocational school, secondary school, community college or other institution of higher learning.

Street Segment means a portion of a street which is located between two intersections, or between an intersection and the end of a cul de sac or dead end street.

Sec. 13-203. License required; general licensing conditions.

It shall be unlawful for any person to operate a Medical Marijuana Business without first having obtained a City license to operate pursuant to the provisions of this Division 2, having a validly issued License in good standing from the state, and having paid all applicable fees. The licensing requirement applies to all Medical Marijuana Businesses that exist on the effective date of the ordinance adopting this provision and any Medical Marijuana Business established after such effective date.

- (a) Pursuant to the provisions of Article 43.3, Title 12, Colorado Revised Statutes, Medical Marijuana Businesses shall be licensed by the City only for a Medical Marijuana Center, as defined in C.R.S., §12-43.3-104(8). Such centers shall meet all criteria and requirements of C.R.S., §12-43.3-402, as well as all other regulatory requirements applicable to Medical Marijuana Centers set forth within this Division 2 and within Article 43.3 of said Title 12, C.R.S.
- (b) The Optional Premises Cultivation license referenced in C.R.S., §12-43.3-403 and Medical Marijuana Infused Products Manufacturer as defined in C.R.S., § 12-43.3-403 will not be issued by the City. Marijuana growing operations are prohibited in the City, due to impacts on adjoining properties, as well as fire, safety, and health risks associated with such facilities.
- (c) The licensing requirements set forth in this section shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state or local law, including, but not by way of limitation, a retail sales and use tax license, retail food establishment license, or any applicable zoning, land use or building permits.
- (d) A Medical Marijuana Center shall not be operated until a license for such use, at the location designated in the application, has been issued by the Department of Revenue of the State of Colorado and the City.
- (e) The issuance of a license pursuant to this section does not create a defense, exception or provide immunity to any person in regard to any potential criminal liability the person may have for the production, distribution or possession of marijuana.
- (f) Separate license shall be required for each location from which a Medical Marijuana Business is operated.
- (g) All Medical Marijuana Business licenses issued by the City shall be valid for a period of one year from the date such license is issued. Renewal applications shall be filed at least 45 days prior to the expiration date of the existing license.
- (h) Licensees shall report each transfer or change of ownership interest, change in Business Manager, or change in financial interest on forms provided by the city clerk. An application for a change of Business Manager shall be submitted at least 30 days prior to any such change to provide necessary time for the background check and processing of the application.
- (i) The submission of an application for or the acceptance of the issuance of a License under this Division 2 from the City shall act as an acknowledgment and agreement by the Applicant or the Licensee that the sale of Marijuana continues to be subject to the control and jurisdiction of the federal government and actions taken by the federal government

under federal laws and regulations may limit or invalidate any License issued by the City or the Licensee's ability to own or operate a Marijuana Business in the City.

Sec. 13-204. License application and review process.

An application for a Medical Marijuana Business License shall be made on forms provided by the City Clerk for such purposes. The Applicant shall use the application to demonstrate its compliance with the provisions of this Division 2 and other applicable laws, rules or regulations. In addition to general information required of standard applications, the application shall require the following information:

(a) Name and address of the owner or owners of the Medical Marijuana Business in whose name the license is proposed to be issued.

(1) If the proposed owner is a corporation, the application shall include the name and address of all officers and directors of the corporation, and of any person holding any financial interest in the corporation, whether as a result of the issuance of stock, instruments of indebtedness, or otherwise, including disclosure of information pertaining to a bank, savings and loan association or other commercial lender which has loaned funds to the applicant.

(2) If the proposed owner is a partnership, association or limited liability company, the application shall include the name and address of all partners, members, managers or persons holding any financial interest in the partnership, association or limited liability company, including those holding an interest as the result of instruments of indebtedness, or otherwise, including disclosure of information pertaining to a bank, savings and loan association or other commercial lender which has loaned funds to the applicant.

(3) If the owner is not a natural person, the application shall include copies of the organizational documents for all entities identified in the application, and the contact information for the person that is authorized to represent for the entity or entities.

(b) Name and address of the proposed manager(s) of the Medical Marijuana Business, if the manager is proposes to be someone other than the owner, or if the owner is an entity rather than a natural person.

(c) A statement indicating whether any of the named owners, members, Business Managers, parties with a financial interest, or persons named on the application have been:

(1) Denied an application for a Medical Marijuana Business License or a Retail Marijuana Establishment License pursuant to this Article, or any similar state or local licensing law, rule or regulation, or had such license suspended or revoked.

(2) Denied an application for a liquor license pursuant to C.R.S., Title 12, Article 46 or 47, or under the provisions of Chapter 3 of this Code, or by an similar state or local licensing law, rule or regulation, or had any such license suspended or revoked.

(3) Convicted, entered a plea of *nolo contendere*, or entered a plea of guilty in conjunction with a deferred sentence and judgment pertaining to any charge related to possession, use, or possession with intent to distribute narcotics, drugs or controlled substances.

(4) Convicted, entered a plea of *nolo contendere*, or entered a plea of guilty in conjunction with a deferred sentence and judgment pertaining to any charge related to

driving or operating a motor vehicle while under the influence of or while impaired by alcohol or controlled substances.

(5) Convicted, entered a plea of *nolo contendere*, or entered a plea of guilty in conjunction with a deferred sentence and judgment pertaining to any felony.

(e) Proof that the applicant will have ownership or legal possession of the premises proposed for the Medical Marijuana Business for the term of the proposed license. If the premises are not owned by the Applicant, such proof of possession shall include a signed statement from the landlord or owner of the Licensed Premises consenting to the use of the property for purposes of operating a Medical Marijuana Business.

(f) Proof of insurance as follows:

Worker's Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work related to the operation of the Medical Marijuana Business and Comprehensive General Liability insurance with minimum single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate, applicable to all premises and operations.

(g) An operating plan for the proposed Medical Marijuana Business, including the following information:

(1) A description of the products and services to be sold or provided by the Medical Marijuana Business.

(2) A dimensioned floor plan of the licensed premises, clearly labeled, showing:

- i. The layout of the structure and the floor plan where the Medical Marijuana Business is to be located including information sufficient to prove compliance with ventilation, security and other structural requirements contained herein;
- ii The principal uses of the floor area depicted on the floor plan, including but not limited to, the areas where non-patients will be permitted, private consulting areas, storage areas, retail sales areas, and restricted areas where Medical Marijuana will be distributed or stored
- iii Production areas, if any, which shall not be open to any persons other than those employed by the business;
- iv Areas where any services other than the distribution or sale of Medical Marijuana is proposed to occur on the license premises; and
- v. The separation of those areas that are open to persons who are not patients from those areas open only to patients.

(h) A security plan indicating how the Applicant will comply with the requirements of this Division 2, and any other applicable law, rule or regulation. The Applicant may submit the portions of such security plan which include trade secrets or specialized security arrangements confidentially. The City will not disclose documents appropriately submitted under the Colorado Open Records Act [§24-72-201, *et seq.*, C.R.S.] if they constitute confidential trade secrets or specialized security arrangements to any party other than law enforcement agencies, unless compelled to do so by Court Order. Any document that the applicant considers eligible for protection under the Colorado Open Records Act shall be clearly marked as confidential and the reasons for such confidentiality shall be stated on the document.

(i) A lighting plan showing the illumination of the outside of the Medical Marijuana Business for security purposes and compliance with applicable City requirements.

- (j) An vicinity map, drawn to scale, indicating, (or zoning confirmation from the City to ascertain) within a radius of one-quarter mile from the boundaries of the property upon which the Medical Marijuana Business is located, the proximity of the property to any School, Residential Child Care Facility, an Addiction Recovery Facility, or dedicated public park that contains children's playground equipment, or to any other facility identified in this Division 2 or in state law that requires a distance separation from a licensed Medical Marijuana Business.
- (k) Finger prints and personal histories for all owners and parties having a financial interest in the proposed Medical Marijuana Business, as defined in this Division 2. All such individuals shall be subject to a criminal background check in conjunction with the license application and review.
- (l) A plan for disposal of any Medical Marijuana or product that is not sold or is contaminated in a manner that protects any portion thereof from being possessed or ingested by any animal or person.
- (m) A plan for ventilation that describes the ventilation systems that will be used to prevent any odor of Marijuana from extending beyond the premises of the business.
- (n) A description of all toxic, flammable or other materials regulated by a federal, state or local government that would have authority over the business if it was not a Medical Marijuana Business, that will be used, kept or created at the Medical Marijuana Business, and the location where such materials will be stored.
- (o) An application for a Medical Marijuana Business license shall be accompanied by the application fee, criminal background check fee, and annual license fee, together with any other applicable fees that may be established by resolution of the City Council. At least annually, the amount of the fees charged shall be reviewed and, if necessary, adjusted to reflect the direct and indirect costs incurred by the city in connection with the administration and enforcement of this Division 2.
- (p) An inspection of the proposed Medical Marijuana Business by the City and by the Durango Fire Protection District shall be required prior to the issuance of a License. Such inspection shall occur after the Licensed Premises are ready for operation, but prior to the stocking of the business with any Medical Marijuana or the opening of the business to any patients or to the public. The purpose of the inspection is to verify that the premises are constructed and can be operated in accordance with the application submitted, the applicable requirements of this Division 2, and any other applicable law, rule or regulation.
- (q) The Durango Local Licensing Authority shall not issue a Medical Marijuana Business license until the inspection, background checks, and all other information available to the City have been found to verify that the Applicant:
 - (1) has submitted a full and complete application;
 - (2) has made improvements to the business consistent with the application;
 - (3) is prepared to operate the business with the owners and managers as set forth in the application, all in compliance with this Division 2 and any other applicable law, rule or regulation;
 - (4) has paid all fees; and
 - (5) is otherwise in compliance with all other provisions of this Division 2 and any other relevant provision of the City Code or state law.
- (r) Any signature on an application for the issuance, transfer, modification of a license for a Medical Marijuana Business or for a change in manager or other amendment to the

license shall constitute a release for purposes of allowing the City to conduct investigations regarding personal histories of all interested parties and shall constitute consent to the release of any information obtained by the City through such process as a public record under the Colorado Open Records Act, including, but not limited to, criminal history reports conducted by the City or any other authorized agency and all financial disclosures obtained by the City or any other entity.

- (s) The application shall be denied if it fails to meet the requirements of this section or if it is found to contain any false or incomplete information.
- (t) All applications for a new Medical Marijuana Business license shall require a public hearing before the Durango Local Licensing Authority appointed by the City Council, inclusive of publication and posting requirements, as set forth in C.R.S., §12-43.3-302.

Sec. 13-205. Persons prohibited as licensees and business managers.

The criteria for determination of those persons who are not eligible to receive a Medical Marijuana Business license or to act as a Manager of a licensed Medical Marijuana Business shall be as provided in this Division 2, by any rules and regulations adopted by the Durango Local Licensing Authority and in C.R.S., §12-43.3-307.

Sec. 13-206. Regulations regarding licensed locations.

- (a) It shall be unlawful to operate a Medical Marijuana Business outside of an enclosed space, capable of being locked within a building. All Medical Marijuana Business licenses shall be issued for specific fixed location within an enclosed building. The portion of such premises upon which the submitted floor plan shows that Medical Marijuana may be stored or sold shall be considered the "restricted area" portion of the businesses.
- (b) A Medical Marijuana Center may be allowed and licensed for operation in the Central Business District (CBD), mixed-use neighborhood (MU-N), mixed-use arterial (MU-A), commercial general (CG), commercial regional (CR), business park (BP), and limited industrial (LI) zones through a Limited Use Permit (LUP). A Marijuana Infused Products Manufacturer may be allowed and licensed for operation in the mixed-use arterial (MU-A), commercial general (CG), commercial regional (CR), business park (BP), and limited industrial (LI) zones through a Limited Use Permit (LUP). Both Medical Marijuana Centers and Marijuana Infused Products Manufacturers may be allowed in Planned Development (PD) zones pursuant to the PD approval process.
- (c) In the Central Business District (CBD), not more than one Medical Marijuana Business or not more than one Retail Marijuana Establishment shall be located on all properties or lots that abut any Street Segment. For corner lots, this standard applies to both Street Segments that abut the corner lot, and only one Medical Marijuana Business or one Retail Marijuana Establishment is permitted on the corner lots that abut the intersection.
- (d) Medical Marijuana Centers shall be allowed in mixed use buildings that include residential uses provided that they are otherwise in compliance with all requirements of this Article, the Codes of the City of Durango and any other applicable law, rule or regulation, and provided that the Medical Marijuana Business is not located on the same floor as a residential use and is accessed from the street or alley by an entrance separate from the street or alley access to any residential unit.
- (e) No Medical Marijuana Business license shall be issued for a Medical Marijuana Business at a location within 1,000 feet of any School, an Addiction Recovery Facility, or

Residential Child Care Facility; or within 250 feet of a dedicated public park that contains children's playground equipment, or any other facility identified in this Division 2 or in state law that requires a distance separation from a licensed Medical Marijuana Business.

- (f) No Medical Marijuana Business license shall be issued for a location that has, within two years immediately preceding the date of the application, been denied by the Durango Local Licensing Authority or the state licensing authority for a Medical Marijuana Business or a Retail Marijuana Establishment due to a concern related to location.
- (g) The measuring of distances for separations required by this Division shall be completed by the City utilizing official maps and shall be determined by measuring from the closest point on the perimeter of the Applicant's property to the closest point of the property of any facility or use requiring separation pursuant to subsection (e) of this section.
- (h) An Applicant may make a request to the Durango Local licensing Authority to grant a variance of up to 10% from the distance required in subsection (e) of this section for the separation between a Medical Marijuana Business and public parks which contain playground equipment and the Durango Local Licensing Authority may grant such a variance if it finds that the location of the Medical Marijuana Business is separated from the public park by a natural or man-made feature or barrier that tends to physically and visually separate the Medical Marijuana Business from the public park or from children using the park.
- (i) A Medical Marijuana Business license may not be issued for any location which is also part of the Licensed Premises of a business holding an alcoholic beverage license pursuant to Chapter 3 of this Code.
- (j) It shall be unlawful for the owner of a building to lease space to or allow the use of any portion of the building by a Medical Marijuana Business unless the tenant has a valid Medical Marijuana Business license or has applied for and not been denied a Medical Marijuana Business license. No Marijuana shall be allowed on the Leased Premises until a Medical Marijuana Business license has been issued by the City. In the event that the City has an articulable reason to believe that a Medical Marijuana Business is being operated within a building, it shall be unlawful for the owner of the building to refuse to allow the City access to the portion of the building in which the suspected Medical Marijuana Business is located to determine whether any marijuana is on the premises.

Sec. 13-207 Conversion of licenses and co-locations of marijuana businesses

- (a) A licensee of a Medical Marijuana Business that was licensed, open and lawfully operating on the effective date of this Division 2 may submit an application to convert the license to a Retail Marijuana Store license by submitting an application for a Retail Marijuana Store or an application to be co-located with an existing Medical Marijuana Business, paying all applicable fees, and complying with all other requirements of this Article applicable to a Retail Marijuana Store. In the case of a conversion, the previously issued license for the Medical Marijuana Business must be surrendered to the City before the Retail Marijuana Store license will be issued. The term of the new license shall be the same as the existing Medical Marijuana Business license.

- (b) A person who holds both a Medical Marijuana Center license pursuant to Division 2 and Article 43.3 of Title 12, C.R.S. and a Retail Marijuana Store license may operate both licenses within the same premises (“co-located operation”), provided they can satisfy the requirements applicable to each business or each premises under the Colorado Retail Marijuana Code and this Article VIII and other City Codes.
- (c) No co-located License shall be issued for a Medical Marijuana Center and a Retail Marijuana Testing Facility, or for a Medical Marijuana Center and any Marijuana Cultivation Facility.
- (d) No co-located License shall be issued for a location in any zone where either of the proposed co-located operations are prohibited by Section 13-206(b) of this Division 2.
- (e) In the event a Medical Marijuana Center authorizes medical patients under 21 years of age on the premises, then there shall be a complete separation of the Medical Marijuana Center and the Retail Marijuana Store operated under a co-located License. Specifically, the operation of the co-located business premises shall include the following:
 - (1) Separate sales and storage areas.
 - (2) Separate entrances and exits.
 - (3) Separate inventories and inventory tracking processes.
 - (4) Separate point of sales operations.
 - (5) Separate record keeping systems.
 - (6) Each operation shall otherwise meet all requirements imposed herein or in any state law for the operation of a Retail Marijuana Establishment and a Medical Marijuana Business.
- (f) Licensees operating a Medical Marijuana Center that prohibits the admittance of patients under the age of 21 years and a Retail Marijuana Store may share their Licensed Premises as a co-location. Such a Medical Marijuana Center Licensee must post signage that clearly conveys that persons under the age of 21 years may not enter. Under these circumstances, and upon approval of the State Licensing Authority and the City, the Medical Marijuana and Retail Marijuana and Medical Marijuana-Infused Product and Retail Marijuana and Retail Marijuana Product must be separately displayed on the same sale floor. Record-keeping for the business operations of both must enable the State and relevant local jurisdictions to clearly distinguish the inventories and business transactions of Medical Marijuana and Medical Marijuana-Infused Products from Retail Marijuana and Retail Marijuana Product.

Sec. 13-208 Regulations related to operation of medical marijuana businesses.

- (a) The Medical Marijuana Business shall be operated and maintained in accordance with the conditions stated in the Application under section 13-204 unless amended under the provisions of section 13-214.
- (b) All Medical Marijuana Businesses shall be required to obtain a city business license and shall collect and remit all applicable state, county and city sales taxes, use taxes or other lawfully imposed tax in a timely manner. The Medical Marijuana Business license, and the sales tax license for the business shall be conspicuously posted in the business.

- (c) Medical Marijuana Businesses shall limit their hours of operation to between 8:00 a.m. and 8:00 p.m. daily.
- (d) No Medical Marijuana or products containing Medical Marijuana shall be smoked, eaten or otherwise consumed or ingested within the Medical Marijuana Business.
- (e) No person shall be allowed entry into the business premises without showing a valid picture identification.
- (f) Any and all possession, storage, display, sales or other distribution of Medical Marijuana shall occur only within the restricted area of a Medical Marijuana Business and shall not be visible from the exterior of the business.
- (g) Each Licensee shall manage the licensed premises himself or herself or employ a separate and distinct manager on the premises and shall report the names of the name of the manager to the City. The Licensee shall report any change in manager to the City within seven days after the change.
- (h) A Medical Marijuana Business shall be ventilated so that the odor of marijuana or marijuana products cannot be detected by a person with a normal sense of smell at the exterior of the Medical Marijuana Business or on any adjoining property.
- (i) The Medical Marijuana Business shall not maintain any quantity of Marijuana within the Licensed Premises in excess of the amount stated on the license application to the City.
- (j) All sales of Medical Marijuana shall be made in person, directly to the purchaser, within the restricted area of the Medical Marijuana Business. No sales shall be made via telephone, internet or other means of remote purchase. Deliveries shall occur only in person to the purchaser at the time of purchase within the restricted area of the Medical Marijuana Business. No drive up windows or other similar delivery process shall be allowed
- (k) It shall be unlawful for any Medical Marijuana Business to employ any person who is not at least 21 years of age. All managers and employees of any Licensee shall possess a valid occupational license and identification badge issued by the state.
- (l) Each Medical Marijuana Business must be operated by a legitimate Primary Caregiver certified as such by the State of Colorado. Medical Marijuana Businesses shall meet the operational criteria for the dispensing of Medical Marijuana as required by the state pursuant to [§12-43.3-101, et seq., C.R.S.]
- (m) There shall be no growing marijuana plants or marijuana clones stored, kept or maintained within a Medical Marijuana Business licensed by the City. All live plant materials shall be kept and maintained at an optional premises location outside the city limits. This shall not preclude the temporary storage of plants for pre-arranged sales and delivery to customers; provided no such plants or clones shall remain on the Licensed Premises overnight.

Sec. 13-209. Signage and Advertising.

- (a) Medical Marijuana Businesses shall apply for a sign permit through the Community Development Department. All exterior signage associated with a medical marijuana business must meet the standards established in the City Code. In addition, no exterior signage shall use the word "marijuana," "cannabis" or any other word, phrase or symbol commonly understood to refer to marijuana.
- (b) A Medical Marijuana Business may not advertise in a manner that is misleading, deceptive, false, or is designed to appeal to minors.
- (c) Within each Medical Marijuana Business, there shall be posted in a conspicuous location a legible sign containing the following warnings:
- (1) A warning that the use of Medical Marijuana may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or operate machinery when under the influence of or impaired by marijuana;
 - (2) A warning that loitering in or around the Medical Marijuana Business is prohibited by state law;
 - (3) A warning that possession and distribution of Marijuana is a violation of federal law;
 - (4) A warning that smoking of Marijuana within a Medical Marijuana business or within 15 feet of such a business is unlawful; and
 - (5) A warning that the smoking or consumption of Marijuana in public is prohibited by state law.
- (d) Except as otherwise provided in this section it shall be unlawful for any person licensed under this article or any other person to advertise any Medical Marijuana Business or any Medical Marijuana-Infused Product anywhere within the City where the advertisement is in plain view of, or in, a place open to the general public, including advertising utilizing any of the following media: any billboard or other outdoor general advertising device as defined by the zoning code; any sign mounted on a vehicle; any hand-held or other portable sign; or any handbill, leaflet or flier directly handed to any person in a public place, left upon a motor vehicle, or posted upon any public or private property. The prohibition set forth in this section shall not apply to:
- (1) Any sign located on the licensed premises of a Medical Marijuana Business which exists solely for the purpose of identifying the location of the premises and which otherwise complies with this Code and any other applicable city laws and regulations; or
 - (2) Any advertisement contained within a newspaper, magazine or other periodical of general circulation within the city or on the internet.
- (e) No Medical Marijuana Business shall distribute or allow the distribution of any Medical Marijuana without charge within a Medical Marijuana Business or at any other place for purposes of promotion, advertising or any other purpose.

Sec. 13-210. Right of entry – records to be maintained and inspection procedures.

- (a) Each Licensee of a Medical Marijuana Business shall keep and maintain a complete set of books of account, invoices, copies of orders and sales, shipping receipts, bills of lading, correspondence, and all other records necessary to fully document the business transactions of such license. The Licensee shall also maintain records which verify that the amount of Medical Marijuana within the Medical Marijuana Business does not exceed the amount allowed by applicable law for the number of patients who have

designated the Medical Marijuana Business owners as their Primary Caregiver. All such records shall be open at all times during business hours for inspection and examination by the City Manager or his duly authorized representative(s). The City may require the Licensee to furnish such information as it considers necessary for the proper administration of this Division 2. The records shall clearly show the source, amount, price and dates of all Medical Marijuana received or purchased, and the amount, price, dates and patient or caregiver for all Medical Marijuana sold.

- (b) By accepting the Medical Marijuana Business license, the Licensee consents to the disclosure of the information required by this section. Any records provided by the licensee that include patient or caregiver confidential information may be submitted in a manner that maintains the confidentiality of the document(s) under the Colorado Open Records Act [C.R.S., §24-72-201, et seq.] or other applicable law. Any document that the applicant considers eligible for protection under the Colorado Open Records Act shall be clearly marked as confidential and the reasons for such confidentiality shall be stated on the document. The City will not disclose documents appropriately submitted under the Colorado Open Records Act [§24-72-201, et seq., C.R.S.] as confidential documents to any party other than law enforcement agencies.
- (c) The City may require an audit of the books of account and records of a Medical Marijuana Business as it may deem necessary. Such audit may be made by an auditor selected by the City, who shall likewise have access to all books and records of such Licensee. The expense of any audit determined to be necessary by the city shall be paid by the city; provided, however, should the audit reflect a failure of the Licensee, in whole or in part, to timely remit all sales taxes due to the City, the expense of the audit shall be paid by the Licensee.
- (d) The acceptance of a Medical Marijuana Business license from the City constitutes consent by the licensee, owners, managers and employees of such business to permit the City Manager, or his authorized representative, to conduct routine inspections of the licensed Medical Marijuana Business to assure that the Medical Marijuana Business and the premises are being operated and maintained with the terms set forth in the Application as required by section 13-204 and that all operations and the premises remain in compliance with this Division 2 or any other applicable law, rule or regulation.

Sec. 13-211. Requirements related to monitoring and security of restricted areas and inventory.

All components of the security plan submitted with the Application, as it may be amended shall be in good working order, monitored and secured 24-hours per day. A separate security system is required for each Medical Marijuana Business. The security plan must include, at a minimum, the following security measures:

- (a) Cameras. The Medical Marijuana Business shall install and use security cameras to monitor and record all areas of the premises (excluding restrooms), including all areas where persons may gain or attempt to gain access to Marijuana or cash maintained by the Medical Marijuana Business. Cameras shall record operations of the business to an off-site location, and shall record all potential areas of ingress or egress to the business with sufficient detail to identify facial features and clothing. Recordings from security cameras shall be maintained by the Licensee for a minimum of forty days in a secure off-site location in the City or through a service over a network that provides on-demand access, commonly referred to as a "cloud."

(b) Storage. The Medical Marijuana Business shall install and use a safe room for storage of any inventory, processed Marijuana and cash on the premises when the business is closed to the public. The safe room shall be incorporated into the building structure and shall have solid core doors with commercial grade locks and shall be visible through the surveillance camera system. For Medical Marijuana-Infused Products that must be kept refrigerated or frozen, the business may lock the refrigerated container or freezer in a manner authorized by the city in place of the use of a safe so long as the container is affixed to the building structure and visible through the surveillance camera system.

(c) Alarm System. The Medical Marijuana Business shall install and use an alarm system that is monitored by a company that is staffed twenty-four (24) hours a day, seven (7) days a week. The security plan submitted to the city shall identify the company monitoring the alarm, including contact information. Any modification relative to the company monitoring the alarm system shall be reported to the City within 72 hours.

Sec. 13-212. Compliance with other applicable laws.

Except as may be otherwise provided in this Division 2, or rules or interpretations adopted by the city pursuant to this Division 2, any law or regulation adopted by the state governing the cultivation, production, possession, or distribution of Medical Marijuana use shall also apply to Medical Marijuana Businesses licensed within the City; provided, however, if a state law or regulation permits what this Division 2 prohibits, this Division 2 shall control.

Sec. 13-213. Suspension or revocation of license; imposition of fines.

The grounds for suspension or revocation of a Medical Marijuana Business license and the procedures for such suspension or revocation shall be as provided in C.R.S., §12-43.3-601. In addition thereto, a violation of any of the provisions of this Division 2 or any state law or regulation related to licensing or operation of a Medical Marijuana Business shall be grounds for suspension or revocation of a Medical Marijuana Business licensee, subject to notice and public hearing.

Sec. 13-214. Term of license; renewals; expiration of license.

- (a) Term of License. A Medical Marijuana Business license shall be valid for one year. The license shall expire on the date stated on the license.
- (b) Renewal of License. The licensee shall apply for renewal of the Medical Marijuana Business license at least 45 days prior to the expiration of the license. The Licensee shall apply for renewal using forms provided by the City. If the Applicant files for renewal within 30 days of the expiration date, then the City may process the renewal application if the Applicant submits a late filing fee of \$500.00 at the time of submittal of the renewal application.
- (1) The renewal license fee, and late fee, if applicable, shall accompany the renewal application. Such fees are nonrefundable.
 - (2) In the event there have been any changes to the plans submitted with the initial license application approved by the City or as part of any prior renewal application, the renewal application shall include specifics of the proposed changes in any of such plans.
 - (3) In the event any person who has an interest as described in the initial disclosures made to the City pursuant to this Division 2, or any business manager, financier, agent

or employee, as defined herein, has been charged with or accused of violations of any law since such disclosure, the renewal application shall include the name of the violator, the date of the violation, the court and case number where the violation was filed and the disposition of such violation.

- (4) In the event the Medical Marijuana Business license has been suspended or revoked, or a licensee has received any notice of violation of any law, the renewal application shall include a copy of the notice, suspension or revocation.
 - (5) The renewal application shall include verification that the Medical Marijuana Business has a valid state license and the state license is in good standing.
 - (6) The renewal application shall include a summary report for the previous twelve months showing the amount of Medical Marijuana purchased; the amount of Medical Marijuana sold, the forms in which Medical Marijuana was sold; the police report numbers or case numbers of all police calls to the Medical Marijuana Business; and for calls resulting in a charge of a violation of any law, the charge, case number and disposition of any such charges. The reports may be the same as those provided by the licensee to the state.
 - (7) The City shall not accept renewal applications submitted after the expiration date of the license, but instead shall require the applicant to file a new license application.
 - (8) In the event there have been allegations of violations of this Code by any of the Licensees or the business submitting a renewal application, the Durango Local Licensing Authority may hold a hearing prior to approving the renewal application. The hearing shall be for purposes of determining whether the application, proposed licensees and past operation of the business have been in compliance with this Division 2. If the application or the Licensees do not meet the requirements of this Division 2, or the business has been operated in the past in violation of this Division 2, the renewal application may be denied by the City or issued with conditions.
 - (9) Nonpayment of Tax. In the event a Medical Marijuana Business that has been open and operating and submitting monthly sales and use tax returns to the City ceases providing sales and use tax returns to the City for a period of three consecutive months or longer, the Medical Marijuana Business license shall be deemed to have expired and a new license shall be required prior to reopening at the location of the business.
- (c) Expiration of License. Expiration of a Medical Marijuana Business license for any reason, including, without limitation, pursuant to subsection (b)(9) above shall be considered an inactive local license as described in C.R.S., §12-43.3-312.

Sec. 13-215. Transfer of ownership; change of location; modification of premises.

- (a) An owner of a License to operate a Medical Marijuana Business may apply to the Durango Local Licensing Authority for a transfer of ownership under the provisions of C.R.S. §12-43.3-309 on forms provided for that purpose by the City. The inquiry by the Durango Local Licensing Authority into the request for a transfer of ownership may include any item that may be reviewed for a new Medical Marijuana Business license, provided that the location of the Medical Marijuana Business shall not be subject to review so long as the location met all requirements of this Division 2 and any provisions of state law at the time the license was originally issued and that location has remained in compliance with this Division 2 and provisions of state law subsequent to the issuance of said License.
- (b) An owner of a License to operate a Medical Marijuana Business may apply to the Durango Local Licensing Authority for a change in location of the Licensed Premises or a

I further certify that said Amended Ordinance No. 0-2014-27 was duly adopted by the Durango City Council on the 16th day of June, 2014, and that in accordance with instructions received from the Durango City Council, said ordinance was published in-full again in the Durango Herald on the 18th day of June, 2014.


City Clerk