

COUNCIL BILL NO. 30

Series 2009

AN ORDINANCE AMENDING TITLE 4 OF THE BRECKENRIDGE TOWN CODE
BY ADOPTING PROVISIONS FOR THE REGULATION OF MEDICAL MARIJUANA
DISPENSARIES; AND REPEALING CONFLICTING TOWN ORDINANCES

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
COLORADO:

Section 1. Regulations Adopted. Title 4 of the Breckenridge Town Code is amended by the addition of a new chapter 14, to be entitled “Medical Marijuana Dispensaries”, which shall read in its entirety as follows:

CHAPTER 14

MEDICAL MARIJUANA DISPENSARIES

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4-14-1: SHORT TITLE: This chapter shall be known and may be cited as the “Town Of Breckenridge Medical Marijuana Dispensary Ordinance.”

4-14-2: FINDINGS: The Town Council adopts this chapter based upon the following findings of fact:

- A. Because federal and state law prohibit the possession and sale of marijuana generally, marijuana sales have never been specifically addressed by Town ordinance.
- B. On November 7, 2000 the voters of the State of Colorado approved Amendment 20. Amendment 20 added §14 of article 18 to the Colorado Constitution, and created a limited exception from criminal liability under Colorado law (as opposed to federal law) for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited, specified circumstances described in Amendment 20.
- C. The intent of Amendment 20 was to enable certain specified persons who comply with the registration provisions of the law to legally obtain, possess, cultivate, grow, use, and distribute marijuana without fear of criminal prosecution under Colorado (as opposed to federal) law.

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- D. Despite the adoption of Amendment 20 marijuana is still a controlled substance under Colorado and federal law. As a result, making it legal for a person to obtain, possess, cultivate, grow, use, transport and distribute marijuana, even for medical use as contemplated by Amendment 20, has the potential for abuse that should be closely monitored and regulated by local authorities to the extent possible.
- E. If not closely monitored and regulated the presence of marijuana, even for the purposes legally permitted by Amendment 20, may cause an increase in illegal activities within the Town affecting the health, safety, order, comfort, convenience and general welfare of the residents of the Town, as well as the health, safety and welfare of the operators of medical marijuana dispensaries and their customers.
- F. If medical marijuana dispensaries operating pursuant Amendment 20 were allowed to be established and to operate without appropriate local regulation of their location, medical marijuana dispensaries might be established in areas that would conflict with the Town's comprehensive land use plan; be inconsistent with surrounding uses; or otherwise be detrimental to the public health, safety and welfare.
- G. Nothing in this chapter allows a person to:
 - 1. engage in conduct that endangers others or causes a public nuisance;
 - 2. possess, cultivate, grow, use, or distribute marijuana for any purpose other than for use as medical marijuana as authorized and limited by Amendment 20, and the implementing state statutes and administrative regulations;
 - 3. possess, cultivate, grow, use, or distribute marijuana that is otherwise illegal under applicable law; or
 - 4. engage in any activity related to the possession, cultivation, growing, use, or distribution of marijuana that is otherwise not permitted under the laws of the Town or the State of Colorado.
- H. This chapter is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort, and convenience of the Town and the inhabitants thereof.
- I. No person, business, activity or use that distributed or involved the distribution of marijuana within the Town prior to the enactment of this chapter shall be deemed to have been legally established under this code, and no such person, business,

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activity, or use shall be entitled to claim legal nonconforming status under any provision of this code or applicable law.

4-14-3: PURPOSE: Recognizing that there is a potential conflict between federal and state law with respect to the operation of medical marijuana dispensaries, it is the purpose of this chapter to:

- A. Impose specific requirements and limitations for those individuals registering with the State of Colorado as a “patient” or “primary care-giver” as those terms are defined in Amendment 20, and the statutes and administrative regulations implementing Amendment 20.
- B. Require that a medical marijuana dispensary (as defined in this chapter) be operated in a safe manner that does not endanger the public welfare.
- C. Mitigate potential negative impacts that a medical marijuana dispensary might cause on surrounding properties and persons.
- D. Regulate the conduct of persons owning, operating, and using a medical marijuana dispensary in order to protect the public health, safety and welfare.
- E. Establish a non-discriminatory mechanism by which the Town can control, through appropriate regulation, the location and operation of medical marijuana dispensaries within the Town.

4-14-4: AUTHORITY: The Town Council hereby finds, determines, and declares that it has the power to adopt this chapter pursuant to:

- A. The Local Government Land Use Control Enabling Act, article 20 of title 29, C.R.S.;
- B. Part 3 of article 23 of title 31, C.R.S. (concerning municipal zoning powers);
- C. Section 31-15-103, C.R.S. (concerning municipal police powers);
- D. Section 31-15-401, C.R.S. (concerning municipal police powers);
- E. Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses);
- F. The authority granted to home rule municipalities by article XX of the Colorado Constitution; and
- G. The powers contained in the Breckenridge Town Charter.

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4-14-5: DEFINITIONS:

- A. As used in this chapter the following words shall have the following meanings, unless the context clearly requires otherwise:

ADJACENT:	Adjacent to or contiguous with the proposed location of a medical marijuana dispensary. Adjacency shall be determined without regard to the existence of a platted or dedicated public street or alley, and real property that would otherwise be determined to be adjacent to a proposed medical marijuana dispensary does not lose its adjacency by virtue of the existence of a platted or dedicated public street or alley.
ALCOHOLIC BEVERAGE:	Has the meaning provided in Section 6-3F-1 of this code.
AMENDMENT 20:	A voter-initiated amendment to the Colorado Constitution adopted November 7, 2000. Amendment 20 added §14 of Article 18 to the Colorado Constitution.
APPLICANT:	A person twenty one years of age or older who has submitted an application for permit pursuant to this chapter.
APPLICATION:	An application for permit submitted pursuant to this chapter.
BUILDING OFFICIAL:	The Building Official of the Town.
DAY:	A calendar day, unless otherwise indicated.
DOWNTOWN OVERLAY DISTRICT:	The geographic area of the Town identified as the Downtown Overlay District in the Town's Land Use Guidelines, as amended from time to time.
GOOD CAUSE (for the purpose of refusing or denying a permit renewal under this chapter):	Means: A. the permittee has violated, does not meet, or has failed to comply with any

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of the terms, conditions, or provisions of this chapter and any rule and regulation promulgated pursuant to this chapter;

- B. the permittee has failed to comply with any special terms or conditions that were placed on its permit at the time the permit was issued, or that were placed on its permit in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or
- C. the permittee's medical marijuana dispensary have been operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the medical marijuana dispensary is located. Evidence to support such a finding can include: (i) a continuing pattern of disorderly conduct as defined in section 6-3C-1 of this code; (ii) a continuing pattern of drug-related criminal conduct within the premises of the medical marijuana dispensary, or in the immediate area surrounding the medical marijuana dispensary; or (iii) a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana dispensary.

GROUND FLOOR:

The floor of a structure at approximately the same elevation as the natural grade of the surrounding area.

HALFWAY HOUSE:

A group care facility for adults or juveniles who have been placed on probation or parole under applicable law.

LAND USE GUIDELINES:

Has the meaning provided in section 9-1-5 of this code.

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MEDICAL MARIJUANA DISPENSARY OR DISPENSARY:	The use of any property or structure within the Town to distribute, transmit, give, dispense, or otherwise provide marijuana in any manner to patients or primary care-givers in accordance with Amendment 20, and the implementing state statutes and administrative regulations. A medical marijuana dispensary may not be used as a physician's office to examine or consult with patients.
PATIENT:	Has the meaning provided in Amendment 20.
PERMIT:	A permit to operate a medical marijuana dispensary issued by the Town pursuant to this chapter.
PERMITTEE:	The person to whom a permit has been issued pursuant to this chapter.
PERSON:	Has the meaning provided in section 1-3-2 of this code.
PRIMARY CARE-GIVER:	Has the meaning provided in Amendment 20.
RESIDENTIAL USE:	Has the meaning provided in section 9-1-5 of this code.
SPLIT LEVEL STRUCTURE:	A structure, or portion of a structure, that includes multiple floors with the lowest floor visible from the street front having a finished grade below the finished grade level of the street front sidewalk.
TOWN:	Has the meaning provided in section 1-3-2 of this code.
TOWN MANAGER:	The Town Manager of the Town, or the Town Manager's designee authorized to act pursuant to section 1-7-2 of this code.
B.	In addition to the definitions provided in subsection A of this section, the other defined terms in Amendment 20 are incorporated into this chapter by reference.

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4-14-6: PERMIT REQUIRED: No person shall operate a medical marijuana dispensary within the Town without a valid permit issued in accordance with this chapter.

4-14-7: APPLICATION FOR PERMIT:

- A. A person seeking to obtain a permit pursuant to this chapter shall file an application with the Town Manager. The form of the application shall be provided by the Town Manager.
- B. A permit issued pursuant to this chapter does not eliminate the need for the permittee to obtain other required Town licenses and permits related to the operation of the approved medical marijuana dispensary, including, without limitation:
 - 1. a development permit if required by the terms of chapter 1 of title 9 of this code;
 - 2. a Town sales tax license;
 - 3. a Town Business and Occupational Tax License; and
 - 4. a building permit, mechanical permit, plumbing permit, or electrical permit.
- C. An application for a permit under this chapter shall contain the following information:
 - 1. the applicant's name, address, telephone number and social security number;
 - 2. the street address of the proposed medical marijuana dispensary;
 - 3. if the applicant is not the owner of the proposed location of the medical marijuana dispensary, a notarized statement from the owner of such property authorizing the submission of the application;
 - 4. a statement of the applicant's personal history;
 - 5. a completed set of the applicant's fingerprints on a form approved by the Town Manager;
 - 6. a statement to be initialed by the applicant that the applicant and the employees of the medical marijuana dispensary may be subject to prosecution under federal marijuana laws;

7. a statement to be initialed by the applicant that the Town accepts no legal liability in connection with the approval and subsequent operation of the medical marijuana dispensary; and
8. any additional information that the Town Manager reasonably determines to be necessary in connection with the investigation and review of the application.

Applications shall be processed by the Town Manager in order of receipt.

4-14-8: APPLICATION FEE: An applicant shall pay to the Town a non-refundable application fee when the application is filed. The purpose of the fee is to cover the administrative costs of processing the application. For applications filed in 2009 the application fee is \$875.00. Thereafter, the amount of the application fee shall be fixed by the Town Council as part of its annual budget process.

4-14-9: INVESTIGATION OF APPLICATION:

- A. Upon receipt of a properly completed application, together with all information required in connection therewith, and the payment of the application fee as required by section 4-14-8, the Town Manager shall transmit copies of the application to:
 1. the Police Department;
 2. the Department of Community Development; and
 3. any other person or agency which the Town Manager determines should properly investigate and comment upon the application.
- B. Upon receipt of a completed application the Police Department shall obtain and review a criminal background records search on the applicant from the Colorado Bureau of Investigation.
- C. Within twenty days of receipt of a completed application those Town departments and other referral agencies described in subsection A of this section shall provide the Town Manager with comments concerning the application.

4-14-10: STANDARDS FOR ISSUANCE OF PERMIT: The Town Manager shall issue a permit under this chapter when, from a consideration of the application and from such other information as may otherwise be obtained, the Town Manager determines that:

- A. The application (including any required attachments and submissions) is complete and signed by the applicant;

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- B. The applicant has paid the application fee and any other fees required by section 4-14-8;
- C. The application does not contain a material falsehood or misrepresentation;
- D. The application complies with all of the requirements of this chapter;
- E. The applicant has good moral character. In making this determination or when considering a criminal conviction, the Town Manager shall be governed by the provisions of section 24-5-101, C.R.S. If the Town Manager takes into consideration information concerning the applicant's criminal history record, the Town Manager shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a permit; and
- F. The proposed location of the medical marijuana dispensary is permitted under section 4-14-25.

4-14-11: DENIAL OF PERMIT: The Town Manager shall deny an application for a permit under this chapter if the Town Manager determines that:

- A. Information contained in the application, or supplemental information requested from the applicant, is found to be false in any material respect; or
- B. The application fails to meet any of the standards sets forth in section 4-14-10.

If an application is denied the application fee shall not be refunded.

4-14-12: AUTHORITY TO IMPOSE CONDITIONS ON PERMIT: The Town Manager shall have the authority to impose such reasonable terms and conditions on a permit as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements of this chapter and applicable law.

4-14-13: DECISION BY TOWN MANAGER:

- A. The Town Manager shall approve, deny, or conditionally approve an application within thirty days of the receipt of the completed application unless, by written notice to the applicant, the decision period is extended for an additional ten days if necessary for the Town Manager to complete his review of the application.
- B. If an application is denied, the Town Manager shall clearly set forth in writing the grounds for denial.

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- C. In the event an application is conditionally approved, the Town Manager shall clearly set forth in writing the conditions of approval.

4-14-14: NOTICE OF DECISION: The Town Manager shall notify the applicant of the decision on the application within three business days of rendering the decision. Notice shall be given by mailing a copy of the Town Manager's decision to the applicant by regular mail, postage prepaid, at the address shown in the application. Notice is deemed to have been properly given upon mailing.

4-14-15: APPEAL OF DENIAL OR CONDITIONAL APPROVAL OF PERMIT:

- A. An applicant has the right to appeal the Town Manager's denial or conditional approval of an application to the Town Council.
- B. An applicant's appeal of the Town Manager's denial or conditional approval of an application shall be processed in accordance with chapter 19 of title 1 of this code; provided, however, that the applicant's written notice of appeal shall be filed with the Town Manager within ten days after the date of mailing of the Town Manager's decision on the application.
- C. The applicant shall be provided with not less than ten days' prior written notice of the appeal hearing to be held by the Town Council.
- D. The burden of proof in an appeal filed under this section shall be on the applicant.
- E. If the Town Council finds by a preponderance of the evidence that the decision of the Town Manager was correct, the Town Council shall uphold the decision of the Town Manager. If the Town Council finds by a preponderance of the evidence that the decision of the Town Manager was incorrect, the Town Manager's decision shall be set aside and the permit issued (if it was previously denied) or the conditions of approval stricken or modified.
- F. Any decision made by the Town Council pursuant to this section shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver the applicant's right to contest the denial or conditional approval of the application.
- G. If there is any conflict between the provisions and requirements of this section and the provisions and requirements of chapter 19 of title 1 of this code, the provisions and requirements of this section shall control.

4-14-16: CONTENTS OF PERMIT: A permit shall contain the following information:

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- A. The name of the permittee;
- B. The date of the issuance of the permit;
- C. The address at which the permittee is authorized to operate the medical marijuana dispensary;
- D. Any special conditions of approval imposed upon the permit by the Town Manager pursuant to section 4-14-12; and
- E. The date of the expiration of the license.

A permit must be signed by both the applicant and the Town Manager to be valid.

4-14-17: INSPECTION OF PREMISES: Prior to the issuance of a permit, the premises at which the medical marijuana dispensary will be operated shall be inspected by the Town's Building Official to determine compliance with the Town's building and technical codes. No permit shall be issued if the premises at which the medical marijuana dispensary will be operated do not comply with the Town's building and technical codes. Throughout the term of the permit the Building Official may inspect the premises at which the medical marijuana dispensary is operated to determine continuing compliance with the Town's building and technical codes. Access to such premises may be obtained by the Building Official in accordance with the applicable provisions of such codes or other applicable law.

4-14-18: PERMIT NOT TRANSFERABLE: A permit is non-transferable and non-assignable. Any attempt to transfer or assign a permit voids the permit.

4-14-19: NOTICE OF ISSUANCE OF PERMIT: Immediately upon the issuance of a permit, the Town Manager shall send a copy of the permit to:

- A. The Police Department;
- B. The Community Development Department;
- C. The Town Clerk;
- D. The Director of Financial Services; and
- E. Any other person as determined by the Town Manager.

4-14-20: DURATION OF PERMIT; RENEWAL

- A. Each permit issued pursuant to this chapter shall be valid for one year from the date of issuance, and may be renewed as provided in this section.

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- B. An application for the renewal of an existing permit shall be made to the Town Manager not less than forty-five days prior to the date of expiration. No application for renewal shall be accepted by the Town Manager after the date of expiration. The Town Manager may waive the forty-five days time requirement set forth in this subsection if the applicant demonstrates an adequate reason.
- C. The provisions of sections 4-14-9 through 4-14-15, inclusive, shall apply to the processing of an application to renew a permit. The timely filing of a renewal application shall extend the current permit until a final decision is made on the renewal application, including any appeal of the Town Manager's decision to the Town Council.
- D. At the time of the filing of an application for the renewal of an existing permit the applicant shall pay a renewal fee in an amount fixed by the Town Council as part of its annual budget process.
- E. The Town Manager may refuse to renew a permit for good cause.

4-14-21: DUTIES OF PERMITTEE: It is the duty and obligation of each permittee to do the following:

- A. Comply with all of the terms and conditions of the permit, and any special conditions on the permit imposed by the Town Manager pursuant to section 4-14-12;
- B. Comply with all of the requirements of this chapter;
- C. Comply with all other applicable Town ordinances;
- D. Comply with all state laws and administrative regulations pertaining to the medical use of marijuana, including, but not limited to, Amendment 20; section 18-18-406.3, C.R.S.; and the administrative regulations issued by the Colorado Department of Public Health and Environment found at 5 CCR 1006-2, all as amended from time to time.
- E. Comply with all applicable federal laws, rules, or regulations, other than a federal law, rule or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20; and
- F. If the Town Manager has a reasonable suspicion that the permittee is or has violated the terms and conditions of the permit, allow inspection of its records, building or structure, and operation by the Town Manager for the purpose of determining the permittee's compliance with the terms and conditions of the permit. However, nothing in this section shall abrogate or affect: (i) any

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applicable confidentiality provision of state or federal law, or (ii) any applicable statutory or constitutional prohibition against unreasonable searches and seizure of property. In the event of any conflict between this section and any applicable state or federal law, the applicable provision of state or federal law shall control.

4-14-22: POSTING OF PERMIT: A permit shall be continuously posted in a conspicuous location at the medical marijuana dispensary.

4-14-23: SUSPENSION OR REVOCATION OF PERMIT:

- A. A permit issued pursuant to this chapter may be suspended or revoked by the Town Manager after a hearing for the following reasons:
 - 1. fraud, misrepresentation, or a false statement of material fact contained in the permit application;
 - 2. a violation of any Town, state, or federal law or regulation, other than a federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20;
 - 3. a violation of any of the terms and conditions of the permit, including any special conditions of approval imposed upon the permit by the Town Manager pursuant to section 4-14-12;
 - 4. a violation of any of the provisions of this chapter;
 - 5. operations have ceased at the medical marijuana dispensary for more than 90 days, including during a change of ownership of the dispensary; or
 - 6. ownership of the medical marijuana dispensary has been transferred without the new owner obtaining a permit pursuant to this chapter.
- B. In connection with the suspension of a permit, the Town Manager may impose reasonable conditions.
- C. A hearing held pursuant to this section shall be processed in accordance with chapter 19 of title 1 of this code.
- D. In deciding whether a permit should be suspended or revoked, and in deciding what conditions to impose in the event of a suspension, if any, the Town Manager shall consider:
 - 1. the nature and seriousness of the violation;
 - 2. corrective action, if any, taken by the permittee;

3. prior violation(s), if any, by the permittee;
 4. the likelihood of recurrence;
 5. all circumstances surrounding the violation;
 6. whether the violation was willful;
 7. the number of previous violations by the permittee; and
 8. previous sanctions, if any, imposed against the permittee.
- E. If the Town Manager suspends a permit the permittee may appeal the suspension or revocation to the Town Council in accordance with chapter 19 of title 1 of this code. The burden of proof in such an appeal is on the permittee. If the Town Council finds by a preponderance of the evidence that the Town Manager acted correctly in suspending or revoking the permit, the Town Council shall uphold the Town Manager’s order of suspension or revocation. If the Town Council finds by a preponderance of the evidence that the Town Manager acted improperly in suspending or revoking the permit, the appeal shall be sustained, and the Town Manager’s order of suspension or revocation shall be set aside. Any decision made by the Town Council pursuant to this section shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant’s failure to timely appeal the decision is a waiver the applicant’s right to contest the denial or conditional approval of the application.
- F. No fee previously paid by a permittee in connection with the application shall be refunded if such permit is suspended or revoked.

4-14-24: LIMITATION ON SALE OF MARIJUANA: No marijuana may be sold, given away, or transferred at a medical marijuana dispensary except to patients and to primary care-givers.

4-14-25: DISPENSARY LOCATION:

- A. Except as provided in subsection F of this section, no medical marijuana dispensary shall be located at a location that does not conform to the requirements of this section.
- B. No medical marijuana dispensary shall be located except within Land Use Districts 5, 9, 11, 19, 20, 31 of the Downtown Overlay District.
- C. In addition to the restriction imposed by subsection B of this section, no medical marijuana dispensary shall be located:

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1. within 500 feet of a licensed child care facility;
 2. within 500 feet of any educational institution or school, college or university, either public or private;
 3. within 500 feet of any halfway house;
 4. adjacent to property being used for a residential use; provided, however, this restriction does not apply to a mixed use building containing both residential and commercial units;
 5. within any building or structure that contains a residential unit;
 6. on the ground floor, if located within the Downtown Overlay District; or
 7. on all floors immediately above and below the sidewalk fronting at street level of any split level structure within the Downtown Overlay District.
- D. The distances described in subsection C shall be computed by direct measurement from the nearest property line of the land used for child care, school, college, university or halfway house to the front door of the medical marijuana dispensary using a straight line. The “front door” is the dispensary’s main entrance facing the nearest public street.
- E. Each medical marijuana dispensary shall be operated from a permanent and fixed location. No medical marijuana dispensary shall be permitted to operate from a moveable, mobile, or transitory location.
- F. Subsection E shall not prevent the physical delivery of medical marijuana to a patient or the patient’s primary caregiver at a location off of the premises of the permittee’s medical marijuana dispensary if:
1. the marijuana was lawfully purchased by the patient or the patient’s primary caregiver from the permittee’s medical marijuana dispensary;
 2. the marijuana is delivered only to the patient or the patient’s primary caregiver;
 3. the marijuana is delivered only by the permittee or an employee of the permittee;
 4. the marijuana is delivered to a location within the Town; and
 5. the marijuana is delivered only by the use of a motor vehicle, bicycle, or other lawful means of transportation.

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- G. The suitability of a location for a medical marijuana dispensary shall be determined at the time of the initial issuance of the permit for such dispensary. The fact that changes in the neighborhood that occur after the initial issuance of the permit might render the site unsuitable for a medical marijuana dispensary under this section shall not be grounds to suspend, revoke or refuse to renew the permit for such dispensary so long as the permit for the dispensary remains in effect.
- H. No medical marijuana dispensary shall be operated as a “home occupation” as described in Policy 38(Absolute) of Section 9-1-19 of this code.

4-14-26: HOURS OF OPERATION: A medical marijuana dispensary may open no earlier than 9 A.M. and shall close no later than 7 P.M. the same day. A medical marijuana dispensary may be open seven days a week.

4-14-27: SIGNAGE: All signage for a medical marijuana dispensary shall comply with the requirements of chapter 2 of title 8 of this code. In addition, no permittee shall display a sign for the medical marijuana dispensary that contains the word “marijuana” or a graphic/image of any portion of a marijuana plant.

4-14-28: REQUIRED WARNINGS TO BE POSTED: There shall be posted in a conspicuous location in each medical marijuana dispensary a legible sign containing the following warnings:

- A. A warning that the diversion of marijuana for non-medical purposes is a violation of state law;
- B. 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 to operate machinery when under the influence of or impaired by marijuana; and
- C. A warning that loitering in or around the medical marijuana dispensary is prohibited by state law.
- D. A warning that possession and distribution of marijuana is a violation of federal law.

4-14-29: ON-SITE CONSUMPTION: The consumption or inhalation of marijuana on or within the premises of a medical marijuana dispensary is prohibited.

4-14-30: PARAPHERNALIA: Devices, contrivances, instruments, and paraphernalia for inhaling or otherwise consuming marijuana including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may lawfully be sold at a medical marijuana dispensary. Such items may be sold or provided only to patients or primary care-givers.

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4-14-31: ON-SITE CULTIVATION, GROWING AND PROCESSING: The growing, cultivation, or processing of marijuana on or within the premises of a medical marijuana dispensary is prohibited unless the dispensary is equipped with a proper ventilation system that filters out the odor of marijuana so that the odor is not capable of being detected by a person with a normal sense of smell at the exterior of the dispensary or any adjoining business, parcel or tract of real property.

4-14-32: ALCOHOL: The sale or consumption of an alcoholic beverage within a medical marijuana dispensary is prohibited.

4-14-33: DISPLAY OF MEDICAL MARIJUANA: No marijuana shall be displayed so as to be visible through glass, windows, or doors by a person of normal visual acuity standing at the outside perimeter of the medical marijuana dispensary.

4-14-34: SECURITY REQUIREMENTS: A permittee shall provide adequate security on the premises of a medical marijuana dispensary including, but not limited to, the following:

- A. Security surveillance cameras installed to monitor the main entrance along with the interior and exterior of the premises to discourage and to facilitate the reporting of criminal acts and nuisance activities occurring at the premises. Security video shall be preserved for at least 72 hours by the permittee;
- B. Robbery and burglary alarm systems which are professionally monitored and maintained in good working conditions;
- C. A locking safe permanently affixed to the premises that is suitable for storage of all of the saleable inventory of marijuana if marijuana is to be stored overnight on the premises; and
- D. Exterior lighting that illuminates the exterior walls of the business and is compliant with chapter 12 of title 9 of this code.

4-4-35: BUSINESS LICENSE REQUIRED: At all times while a permit is in effect the permittee shall possess a valid license issued under chapter 1 of title 4 of this code.

4-14-36: TAXES: Each permittee shall collect and remit sales tax on all medical marijuana, paraphernalia, and other tangible personal property sold by the permittee at the medical marijuana dispensary.

4-14-37: REQUIRED RECORD:

- A. Each permittee shall maintain an accurate and complete record of all marijuana sold or dispensed at the medical marijuana dispensary. The record shall contain the following information:
 - 1. The quantity of marijuana sold or dispensed; and
 - 2. The date and time the marijuana was sold or dispensed
- B. The permittee's records described in subsection A of this section shall be available for inspection by the Town's police department pursuant to Rule 41 of the Colorado Rules of Criminal Procedure or Rule 241 of the Colorado Municipal Court Rules of Procedure.
- C. Nothing in this section shall abrogate or affect : (i) any applicable confidentiality provision of state or federal law, or (ii) any applicable statutory or constitutional prohibition against unreasonable searches and seizure of property. In the event of any conflict between this section and any applicable state or federal law, the applicable provision of state or federal law shall control.

4-14-38: PENALTIES; INJUNCTIVE RELIEF:

- A. It is a misdemeanor offense for any person to violate any provision of this chapter. Any person convicted of having violated any provision of this chapter shall be punished as set forth in chapter 4 of title 1 of this code.
- B. The operation of a medical marijuana dispensary without a valid permit issued pursuant to this chapter may be enjoined by the Town in an action brought in a court of competent jurisdiction. In any case in which the Town prevails in a civil action initiated pursuant to this section, the Town may recover its reasonable attorney fees plus costs of the proceeding.
- C. The remedies provided in this section are in addition to any other remedy provided by applicable law.

4-14-39: NO WAIVER OF GOVERNMENTAL IMMUNITY: In adopting this chapter the Town Council is relying on, and does not waive or intend to waive by any provision of this chapter, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, section 24-10-101 et seq., C.R.S., as from time to time amended, or any other limitation, right, immunity, or protection otherwise available to the Town, its officers, or its employees.

4-14-40: NO TOWN LIABILITY: By accepting a permit issued pursuant to this chapter a permittee releases the Town, its officers, elected officials, employees, attorneys, and agents from

MEDICAL MARIJUANA DISPENSARY ORDINANCE

any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of dispensary owners, operators, employees, clients, or customers for a violation of state or federal laws, rules or regulations. The Town Manager may require a permittee to execute a written instrument confirming the provisions of this section.

4-14-41: INDEMNIFICATION OF TOWN: By accepting a permit issued pursuant to this chapter a permittee, jointly and severally if more than one, agrees to indemnify and defend the Town, its officers, elected officials, employees, attorneys, agents, insurers, and self-insurance pool against all liability, claims, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the operation of the medical marijuana dispensary that is the subject of the permit. The permittee further agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees. The Town Manager may require a permittee to execute a written instrument confirming the provisions of this section.

4-14-42: OTHER LAWS REMAIN APPLICABLE: The provisions of this chapter do not protect permittees, operators, employees, customers and clients of a permitted medical marijuana dispensary from prosecution pursuant to any laws that may prohibit the cultivation, sale, use, or possession of controlled substances. In addition, as of the date of the adoption of this chapter the cultivation, sale, possession, distribution, and use of marijuana remain violations of federal and state law (except for conduct covered by Amendment 20), and this chapter affords no protection against prosecution under such federal and state laws. Permittees, operators, employees, customers and clients of a permitted medical marijuana dispensary assume any and all risk and any and all liability arising or resulting from the operation of the dispensary under any state or federal law. Further, to the greatest extent permitted by law, any actions taken under the provisions of this chapter by any public officer or officers, elected or appointed officials, employees, attorneys and agents of the Town of Breckenridge shall not become a personal liability of such person or of the Town.

4-14-43: RULES AND REGULATIONS: The Town Manager shall have the authority from time to time to adopt, amend, alter, and repeal administrative rules and regulations as may be necessary for the proper administration of this chapter. Such regulations shall be adopted in accordance with the procedures established by chapter 18, title 1 of this code.

Section 2. Town Code. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 3. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid or ineffective by the

final, nonappealable order or judgment of any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance. The Town Council hereby declares that it would have adopted each section, paragraph, sentence, clause and phrase of this ordinance irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases may be declared unconstitutional, invalid or ineffective.

Section 4. Repeal of Ordinances.

- A. Section 6-5-1 of the Breckenridge Town Code, entitled “Medical Marijuana Ordinance” is repealed.
- B. Ordinance No. 16, Series 2009, entitled “An Ordinance Imposing A Temporary Moratorium On The Submission, Acceptance, Processing, And Approval Of Any Application For A Town Of Breckenridge Permit Or License Related To The Operation Of A Business That Sells Medical Marijuana Pursuant To The Authority Granted By Article 18, Section 14 Of The Colorado Constitution; Directing The Prompt Investigation Of The Town’s Regulatory Authority Over Such Businesses; Declaring The Intention Of The Town Council To Consider The Adoption Of Appropriate Town Regulations With Respect To Such Businesses If Permitted By Law; Declaring An Emergency; And Providing For An Immediate Effective Date Of This Ordinance”, is repealed.
- C. Ordinance No. 31, Series 2009, entitled “An Ordinance Extending Until October 7, 2009 The Temporary Moratorium On The Submission, Acceptance, Processing, And Approval Of Any Application For A Town Of Breckenridge Permit Or License Related To The Operation Of A Business That Sells Medical Marijuana; Declaring An Emergency; And Providing For An Immediate Effective Date Of This Ordinance”, is repealed.

Section 5. Effective Date. This ordinance shall be published and become effective as provided by section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2009. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk