

Chapter 5.16
Marijuana Licensing

Sec. 5.16.010 Short Title.

This Chapter is to be known and may be cited as the “City of Aspen Marijuana Code.”

Sec. 5.16.020. Declaration of policy and purpose.

The City Council hereby declares that the purpose of this Chapter is to exercise the authority of the City of Aspen to allow state-licensed medical marijuana establishments and retail marijuana establishments to exist in the City of Aspen in accordance with applicable state laws and regulations and in accordance with the local licensing requirements and other restrictions set forth herein. The City Council intends that the City issue local licenses as authorized by the Colorado Constitution, state law and regulations and that the City's licensing requirements be consistent with those for state licenses under state law and regulations, except those requirements that are left to local discretion or are otherwise of local concern, as set forth in this

Chapter.

Sec. 5.16.030. Colorado Medical Marijuana Code and Retail Marijuana Code and regulations adopted.

Except where the provisions of this Chapter are inconsistent with or differ from the laws, rules, and regulations adopted by reference in this section, the provisions of the Colorado Medical Marijuana Code, Article 43.3, Title 12, C.R.S., as amended, and the Colorado Retail Marijuana Code, Article 43.4, Title 12, C.R.S. and the provisions of Colorado Rules and Regulations adopted under the authorization granted by those provisions are adopted and made a part of this Code as if set out in full. At least one (1) copy of the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code and all rules and regulations promulgated pursuant thereto shall be kept on file in the office of the City Clerk and shall be available for inspection during regular business hours.

Sec. 5.16.040. Definitions.

Except where specifically defined in this Section, the definitions contained in the state constitution, the Medical Marijuana Code, the Retail Marijuana Code, and the rules and regulations promulgated thereunder shall apply to this Chapter. In addition, the following definitions shall apply:

- a) *Retail Marijuana Code* shall mean article 43.4 of title 12, C.R.S., and any rules or regulations promulgated thereunder, as amended.
- b) *Medical Marijuana Code* shall mean article 43.3 of title 12, C.R.S. and any rules or regulations promulgated thereunder, as amended.
- c) *Licensed Premises* means the premises specified in an application for a license pursuant to this Chapter and either the Medical Marijuana Code or the Retail Marijuana Code, which are owned or in lawful possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, or test marijuana in accordance with the provisions of this article, section 16 of article XVIII of the Colorado Constitution, the Colorado Retail Marijuana Code and/or the Colorado Medical Marijuana Code.

- d) *Licensee* means a person licensed or registered pursuant to the Colorado Retail Marijuana Code or the Colorado Medical Marijuana Code and this Chapter.
- e) *Medical Marijuana Establishment* includes a medical marijuana center, a medical marijuana-infused product manufacturer, or an optional premises cultivation operation.
- f) *Open and public* means a place open to the general public, which includes a place to which the public or a substantial number of the public has access without restriction, including but not limited to highways, streets and sidewalks, transportation facilities, places of amusement, parks, playgrounds, and the common areas of public buildings and facilities that are generally open or accessible to members of the public without restriction.
- g) *Openly* means not protected from unaided observation lawfully made from outside its perimeter not involving physical intrusion.
- h) *Publicly* means an area that is open to general access without restriction.
- i) *Retail Marijuana Establishment* includes retail marijuana store, retail marijuana cultivation facility, retail marijuana product manufacturing facility, and retail marijuana testing facility.
- j) *Operating fees* means fees that must be paid by a licensee for the costs as authorized in section 16(5)(f) of article XVIII of the Colorado Constitution, or as may be more fully defined in the Colorado Retail Marijuana Code, including but not limited to inspection, administration, and enforcement of retail marijuana establishments authorized pursuant to this article.
- k) *State medical marijuana license pending* or *pending state medical marijuana license* means a complete application has been filed and accepted and all required fees paid to the state licensing authority.

Sec. 5.16.050 Local Licensing Authority.

The Local Licensing Authority established in Section 5.04.040 of this Title, incorporated herein by this reference in its entirety, shall be the local licensing authority for all marijuana licenses issued by the City of Aspen. In addition to those powers and duties set out in Section 5.04.040, the Authority shall have all the powers and duties as are set forth in this article, in the Colorado Retail Marijuana Code, the Colorado Medical Marijuana Code and subsection 5(e) of section 16 of article XVIII of the Colorado Constitution

Sec. 5.16.060 City license required.

On and after the effective date of this Chapter;

- a. No person may operate a medical marijuana establishment, a retail marijuana establishment, or a dually located medical marijuana establishment and a retail marijuana establishment within the City without both a valid license issued by the Local Licensing Authority and a valid license issued by the State Licensing Authority; provided, however, that any Medical Marijuana Establishment legally operating with a state medical marijuana license or with a state medical marijuana license pending and a local business license within the City limits on the effective date of this Chapter may continue in operation until final action on the state and Aspen Marijuana Code license applications, subject to the following requirements:

1. The applicant applies for a medical marijuana license under this Chapter within thirty (30) days of the effective date of this Chapter, and
 2. Should the State or City marijuana license be denied for any reason, the applicant agrees to cease operations within the City within thirty (30) days of receipt of notice of denial or within thirty days of the denial of any appeal.
- b. A separate license shall be required for each specific business and for each geographic location.

Sec. 5.16.070 Authority to issue City license; qualification; referral; appeal.

- a. An applicant for a City license under this Chapter shall apply therefor to the City Clerk on forms provided by the City Clerk. The City Clerk is responsible for providing application forms to prospective applicants, and for generally supervising the application process up to the point that a completed application is submitted to the Local Licensing Authority for a decision. Once an application is determined to be complete, the application and all supporting documentation shall be forwarded to the Local Licensing Authority. The Local Licensing Authority shall make a final decision on the application as provided in this Chapter.
- b. The Local Licensing Authority may issue any type of license authorized by the Retail Marijuana Code or the Medical Marijuana Code, currently including the following:
- Retail marijuana store license
 - Retail marijuana cultivation facility license
 - Retail marijuana product manufacturing facility license
 - Retail marijuana testing facility license
 - Medical marijuana center license
 - Optional premises cultivation license
 - Medical marijuana-infused products manufacturing license
- c. In order to qualify for a City license under this Chapter, an applicant must meet all conditions for the issuance of the parallel state license prescribed by the Medical Marijuana Code and the Retail Marijuana Code and shall meet all requirements of this Chapter, provided, however, that the fees for a City license are those prescribed by Section 5.16.140 of this Code.
- d. Upon receipt of a properly completed application, together with all information required in connection therewith, and the payment of the applicable fee as required by Section 5.16.140, the City Clerk shall transmit copies of the application to:
1. the Police Department;
 2. the Department of Community Development;
 3. the Environmental Health Department; and
 4. any other person or agency that the Local Licensing Authority determines should properly investigate and comment upon the application.

- e. Upon receipt of a completed application the Police Department shall promptly obtain and review a criminal background records search on the applicant. The Police Department may use the background records search conducted by the state for any state marijuana license application if it is available.
- f. Within twenty days of receipt of a completed application those City departments and other referral agencies described in subsection d. of this Section shall provide the Local Licensing Authority with comments concerning the application.
- g. An applicant shall cooperate with the Local Licensing Authority with respect to the review and investigation of the application.
- h. The Authority shall provide the State with written notice of its decision on each license application.
- i. The Authority shall promptly notify the applicant of its decision by giving written notice to the applicant at applicant's current mailing address. In the event of a denial or a conditional approval, the Authority will provide the applicant with a written statement containing the reasons for denial or the conditions of the approval.
- j. The Authority shall consider each application and either approve, deny or conditionally approve an application within ninety days(90) days of receipt or such additional time as may be reasonably necessary, when, after considering the application, any application forwarded to it by the State and from such other information as may otherwise be obtained or requested by the Authority, the Authority determines that the application complies with all of the requirements of this article, including the following:
 - (i) The application, including any required attachments and submissions, is complete and signed by the applicant;
 - (ii) The applicant has paid the fees required by this Chapter;
 - (iii)The application does not contain a material falsehood or misrepresentation;
 - (iv)The location of the Retail Marijuana Establishment or Medical Marijuana Establishment is proposed to be located on a premise permitted by the applicable zoning and the land use code;
 - (v) The location of the Retail Marijuana Establishment or Medical Marijuana Establishment is not within 500 feet of any school; and
 - (vi)The applicant meets or otherwise will meet all the requirements of this Chapter, including the requirements of the applicable state laws and regulations incorporated herein.
- k. If the Local Licensing Authority approves conditionally or denies_a license, the licensee may appeal the conditional approval or denial to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The licensee's failure to timely appeal the decision is a waiver the licensee's right to contest the conditional approval or denial of the application.

Sec. 5.16.080 State law procedure, public hearing required.

- a. Except as may be amended by this Chapter, provisions of the Medical Marijuana Code and the Retail Marijuana Code governing procedures for applications, hearing and decisions for state licenses shall apply for City licenses.
- b. **Public Hearing.** Upon receipt of an application for a local license, except an application for renewal, for transfer of ownership, for modification of premises or change of location within the City, the Authority will schedule a public hearing upon the application. When the Authority schedules a hearing, it shall post and publish public notice thereof not less than ten(10) days prior to the hearing. The Authority shall give public notice by the posting of notice in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation in Pitkin County, Colorado.

Sec. 5.16.090 Term and renewal of licenses.

- a. Each license issued pursuant to this Chapter shall be valid for one year from the date of issuance, and may be renewed as provided in the applicable code, the applicable administrative regulations, and this Chapter, provided, however, that a license shall not be renewed if the Local Licensing Authority determines that the licensed premises have been inactive, without good cause, for at least one year.
- b. The Local Licensing Authority may refuse to renew a license for good cause.
- c. No license shall be renewed by the Local Licensing Authority until the licensee provides verification that the license has been renewed by the State Licensing Authority.
- d. Notwithstanding anything contained in this Chapter to the contrary, a licensee has no vested right to the renewal of a license, and no property right in the renewal of a license.

Sec. 5.16.100 Change of location.

Change of location of any license shall be governed by the standards and procedures set forth in the Retail or Medical Marijuana Code and regulations adopted pursuant thereto and shall be administered by the Authority in the same manner as the state licensing authority administers changes of location. No change of location of a licensed premises shall be approved by the Local Licensing Authority if the proposed new location of the licensed premises is not a location that is permitted by City zoning or this Chapter.

Sec. 5.16.110 Modification of premises.

Modification of the premises of any license shall be governed by the standards and procedures set forth in the Retail or Medical Marijuana Code and regulations adopted pursuant thereto and shall be administered by the Authority in the same manner as the state licensing authority administers modification of premises.

Sec. 5.16.120 Transfer of ownership.

Transfer of ownership of any license shall be governed by the standards and procedures set forth in the Retail or Medical Marijuana Code and regulations adopted pursuant thereto and shall be administered by the Authority in the same manner as the state licensing authority administers transfers of ownership.

Sec. 5.16.130 Manager and employee requirements.

Manager and employee qualifications, registration and badging shall be governed by the standards and procedures set forth in the Retail or Medical Marijuana Code and regulations adopted pursuant thereto.

Sec. 5.16.140 License and application fees.

An applicant for a new license shall pay to the City a non-refundable operating fee when the application is filed. The purpose of the fee is to cover the direct and indirect costs to the City of administering the local licensing mechanism established by this Chapter and is in lieu of separate application and licensing fees. For applications filed in 2013 or 2014 for the operating year 2014, the operating fees are as follows:

- a. New medical marijuana business license:

Type of License	Local Operating fee
Type 1 Medical Marijuana Center	\$2000.00
Type 2 Medical Marijuana Center	\$2000.00
Type 3 Medical Marijuana Center	\$2000.00
Optional Premises Cultivation License	\$2000.00
Medical Marijuana-Infused Products Manufacturers' License	\$2000.00

- b. Medical marijuana center applying for retail marijuana store license:

Type of License	Local Operating fee
Medical Marijuana Center 1 Applying For Retail Marijuana Store License	\$2000.00

Medical Marijuana Center 2 Applying For Retail Marijuana Store License	\$2000.00
Medical Marijuana Center 3 Applying For Retail Marijuana Store License	\$2000.00

c. New retail marijuana establishment license:

Type of License	Local Operating Fee
Retail Store	\$2000.00
Retail Marijuana Cultivation Facility	\$2000.00
Retail Marijuana Products Manufacturing	\$2000.00
Retail Marijuana Testing Facility	\$2000.00

d. Fees for the annual renewal of any license issued by the City shall be fifty percent of the fee for the issuance of a new license as described above.

e. The following operating fees shall be paid to the City at the time the service is requested:

Service Requested	Fee
Transfer of Ownership of Business License or Application	\$700.00
Corporation or LLC Structure Change (per person)	\$100.00
Change of Location	\$500.00
Modification of Premises	\$150.00

f. The City is entitled to receive its share of the license application fees received by the state licensing authority in addition to the fees set forth above.

- g. As part of the annual budget process, the amount of fees charged by the City pursuant to this Section shall be reviewed and, if necessary, adjusted to reflect the direct and indirect costs incurred by the City in connection with the adoption, administration and enforcement of this Chapter.
- h. Beginning with the fiscal 2015 budget, the amount of the fees charged by the City pursuant to this Section shall be fixed by City Council as part of its annual budget process. If, for any reason, such fees are not fixed by City Council as part of its annual budget process, the fees for the preceding year shall continue in full force and effect until changed by City Council.

Sec. 5.16.150. Suspension or revocation of license.

- a. A license issued by the Local Licensing Authority may be suspended or revoked by the Local Licensing Authority in accordance with the standards and procedures set forth in the applicable code, the applicable administrative regulations and this Chapter.
- b. In addition to the standards set forth in the applicable code and the applicable administrative regulations, a violation of this Chapter, or of the terms and conditions of a license issued by the Local Licensing Authority pursuant to this Chapter, may be grounds for the suspension or revocation of a license issued by the Local Licensing Authority.
- c. In connection with the suspension of a license, the Local Licensing Authority may impose reasonable conditions.
- d. In deciding whether a license should be suspended or revoked, and in deciding what conditions to impose in the event of a suspension, if any, the Local Licensing Authority shall consider:
 - 1. the nature and seriousness of the violation;
 - 2. corrective action, if any, taken by the licensee;
 - 3. prior violation(s), if any, by the licensee;
 - 4. the likelihood of recurrence;
 - 5. all circumstances surrounding the violation;
 - 6. whether the violation was willful or deliberate;
 - 7. the number of previous violations by the licensee;
 - 8. previous sanctions, if any, imposed against the licensee; and
 - 9. whether the owner or manager is the violator or has directed an employee or other individual to violate the law.
- e. If an offense is described in the applicable administrative regulations, the Licensing Authority shall follow the provisions of such regulation in deciding the appropriate sanction to be imposed upon the licensee.
- f. The Authority may impose a civil penalty or fine in lieu of or in addition to a suspension, as set forth in section 5.04.04.
- g. A license issued by the Local Licensing Authority may be revoked if the Local Licensing Authority determines that the licensed premises have been inactive, without good cause, for at least one year.
- h. If the Local Licensing Authority suspends or revokes a license the licensee may appeal the suspension or revocation to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of

Civil Procedure. The licensee's failure to timely appeal the decision is a waiver the licensee's right to contest the suspension or revocation of the license.

- i. No fee previously paid by a licensee in connection with a license shall be refunded if the licensee's license is suspended or revoked.

Sec. 5.16.160 Unlawful acts.

The following acts are prohibited and unlawful and are punishable as set forth in Section 1.04.080 unless otherwise specified:

- a. The possession, use or consumption of marijuana by any person under 21 years of age, unless such possession, use or consumption is authorized under Article 43.3 of Title 12, C.R.S. A first offense shall be punished by a fine not to exceed \$100.00; a second offense shall be punished by a fine of not more than \$250.00, and any third or subsequent offense shall be punished as set forth in Section 1.04.080.
- b. The possession, use or consumption of marijuana openly and publicly by any person. A first offense shall be punished by a fine not to exceed \$100.00; a second offense shall be punished by a fine of not more than \$250.00, and any third or subsequent offense shall be punished as set forth in Section 1.04.080.
- c. The transfer of any amount of marijuana by any person twenty-one years of age or older to any person who is less than twenty-one years of age.
- d. Other than within licensed premises, the open and public display of marijuana or marijuana products for sale, such as at a Saturday market.
- e. The operation of any public or private club or business allowing the consumption of marijuana on the premises.

Sec. 5.16.170 Effective date; applicability.

This Chapter shall be effective thirty days after final passage and shall govern all applications submitted to the City for licensing of any retail or medical marijuana establishment in the City under the Retail or Medical Marijuana Code on and after that date.

Sec. 5.16.180 Transition Period.

- a. Prior to January 1, 2015, no retail marijuana establishment shall be licensed or otherwise permitted in the City unless, as of October 1, 2013:
 1. The applicant for licensing is currently operating in good standing a state licensed medical marijuana business within the City or has a pending state medical marijuana license application for premises within the City and has a City business license and the applicant proposes to surrender the existing medical marijuana license upon receipt of a retail marijuana license, thereby converting the existing medical marijuana establishment into a retail marijuana establishment; or
 2. The applicant for licensing is currently operating in good standing a licensed medical marijuana business within the City or has a pending state application for a licensed medical marijuana business within the City and has a City business license and the applicant proposes to retain the existing medical marijuana license while locating a retail marijuana establishment under common ownership at the same location to the extent allowed by the Colorado Retail Marijuana Code and applicable state rules and regulations.

- b. Prior to January 1, 2015, any person who obtains a transfer of ownership of an existing medical marijuana business that is duly licensed under both the Medical Marijuana Code and this Chapter may qualify for retail licensing as allowed by subsection (a) of this section.
- c. Prior to January 1, 2015, any person who obtains a change of location of an existing medical marijuana business that is duly licensed under both the Medical Marijuana Code and this chapter may qualify for retail licensing as allowed by subsection (a) of this section.
- d. On and after October 1, 2014, any person who otherwise qualifies for licensing under applicable state and City laws may apply for licensing of a retail marijuana establishment in the City, regardless of whether or not the applicant is the owner of an existing medical marijuana business in the City; provided that such license shall not issue any sooner than January 1, 2015.