

## **Chapter 5.44 MEDICAL MARIJUANA ESTABLISHMENT REGULATIONS AND LICENSING<sup>1</sup>**

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<sup>1</sup>Editor's note(s)—Ord. No. 2016-1, § 2, adopted April 19, 2016, repealed the former Chapter 5.44, §§ 5.44.010—5.44.290, and enacted a new Chapter 5.44 as set out herein. The former Chapter 5.44 pertained to similar subject matter and derived from Ord. No. 2013-16, adopted November 6, 2013 and Ord. No. 2014-4, adopted May 6, 2014.

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#### **5.44.010 Findings and legislative intent.**

The city council adopts this chapter based upon the following findings of fact:

- A. On November 7, 2000, the voters of the State of Colorado approved Amendment 20. Amendment 20 added Section 14 of Article XVIII to the Colorado Constitution and created a limited exception from criminal liability under state 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.
- B. The intent of Amendment 20 is 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 state (as opposed to federal) law.
- C. Despite the adoption of Amendment 20, marijuana is still a controlled substance under state and federal law. As a result, making it legal for a person to obtain, possess, cultivate, grow, use 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.
- D. If not closely monitored and regulated, the presence of marijuana, even for the purposes legally permitted by Amendment 20, can cause an increase in illegal activities within the city affecting the health, safety, order, comfort, convenience and general welfare of the residents of the city.
- E. If medical marijuana establishments operating pursuant to Amendment 20 were allowed to be established and to operate without appropriate local regulation of their location, medical marijuana establishments might be established in areas that would conflict with the city's comprehensive land use plan; be inconsistent with surrounding uses; or otherwise be detrimental to the public health, safety and welfare.
- F. 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 city or the state.
- G. 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 city and the inhabitants thereof.
- H. No person, business, activity or use that distributed or involved the distribution of marijuana within the city prior to the enactment of this chapter shall be deemed to have been legally established under this code, and no such person, business, activity or use shall be entitled to claim legal, nonconforming status under any provision of this code or applicable law.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.020 Authority.**

The city council hereby finds, determines and declares that it has the power to adopt this chapter pursuant to:

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- 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. Section 14 of Article XVIII of the Colorado Constitution.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.030 Definitions.**

- A. As used in this chapter, the following words shall have the following meanings:

"Amendment 20" means a voter-initiated amendment to the Colorado Constitution adopted November 7, 2000, codified as Section 14 of Article XVIII to the Colorado Constitution.

"Applicant" means a person who has submitted an application for a license pursuant to this chapter.

"Application" means an application for a license submitted pursuant to this chapter.

"Authority" means the Leadville Marijuana Licensing Authority.

"City clerk" means the city clerk or deputy city clerk.

"Colorado Medical Marijuana Code" means Article 43.3 of Title 12 of the Colorado Revised Statutes, inclusive of promulgated rules, and as may be amended.

"Crime of violence" shall have the same meaning as set forth in Section 18-1.3-406, C.R.S. whether committed in Colorado or another state.

"Cultivation" means the process by which a person promotes the germination and growth of a seed to a mature marijuana plant. Cultivation does not include the storing or watering of mature marijuana plants without the aid of grow lighting.

"Day" means a calendar day, unless otherwise indicated.

"Good cause" means and includes: (1) the licensee has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of this chapter and any rule and regulation promulgated pursuant to this chapter or the Colorado Medical Marijuana Code; (2) the licensee has failed to comply with any special terms or conditions that were placed on its license at the time the license was issued pursuant to an order of the Colorado Department of Revenue or Local Licensing Authority; or (3) the licensee's medical marijuana establishment has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the medical marijuana establishment is located.

"License" means a license to operate a medical marijuana establishment issued pursuant to this chapter.

"Licensee" means a person licensed pursuant to this chapter and the Colorado Medical Marijuana Code.

"Marijuana" shall have the same meaning as set forth in Section 9.40.010 of this code.

"Marijuana accessories" shall have the same meaning as set forth in Section 9.40.010 of this code.

"Medical marijuana center" means a premises licensed pursuant to the Colorado Medical Marijuana Code to operate a business described in Section 12-43.3-402, C.R.S., that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the Colorado Constitution but is not a caregiver.

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"Medical marijuana" establishment means a medical marijuana center, a medical marijuana-infused product manufacturer or an optional premises cultivation operation.

"Medical marijuana-infused product" means a product infused with medical marijuana that is intended for use or consumption other than by smoking, including but not limited to edible products, ointments and tinctures.

"Medical marijuana-infused product manufacturer" means a person licensed pursuant to this chapter and the Colorado Medical Marijuana Code to operate a business as described in Section 12-43.3-404, C.R.S.

"Optional premises cultivation operation" means a person licensed pursuant to this chapter and the Colorado Medical Marijuana Code to operate a business as described in Section 12-43.3-403, C.R.S..

"Party in interest" means a person allowed to present evidence and to cross-examine witnesses at public hearings pertaining to medical marijuana license applications. Only the following persons may be a party in interest:

1. The applicant;
2. An adult who resides within the corporate limits of the City of Leadville;
3. An owner or manager of a business located within the corporate limits of the City of Leadville.

"Patient" has the meaning provided in Section 14(a)(d) of Article XVIII of the Colorado Constitution as further defined and regulated in Section 25-1.5-106, C.R.S., and 5 C.C.R. 1006-2.

"Primary caregiver" has the meaning provided in Section 14(1)(f) of Article XVIII of the Colorado Constitution as further defined and regulated in Section 25-1.5-106, C.R.S., and 5 C.C.R. 1006-2.

"School" means a public or private preschool or a public or private elementary, middle, junior high or high school.

"Youth and family prevention business" means a public or private business established to prevent substance abuse and promote healthy family functioning.

- B. In addition to the definitions provided in subsection A above, the other defined terms in Amendment 20 and the Colorado Medical Marijuana Code are incorporated into this chapter by reference.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.040 Local licensing authority.**

In addition to the powers of the authority set forth in Chapter 5.40 of the code, the authority shall have the following powers and authority:

- A. The authority shall have the power to require any applicant or licensee to furnish any relevant information required by the authority.
- B. The authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records at any hearing that the authority is authorized to conduct. The authority may adopt public hearing procedures by resolution.
- C. The authority shall possess all powers given to local licensing authorities by the provisions of the Colorado Medical Marijuana Code and rules and regulations promulgated thereunder. For the purpose of regulating the operation of medical marijuana establishments, the Authority in its discretion, upon application in the prescribed form, may approve, conditionally approve, or deny an applicant a local license for a medical marijuana establishment, subject to the provisions and restrictions provided in this Chapter, Section 14 of Article XVIII of the Colorado Constitution and the Colorado Medical Marijuana Code.

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- D. Any decision made by the authority to approve, conditionally approve, or deny a license application, to revoke or suspend a license, or to renew or not renew a license shall be a final decision which may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. No defense or objection may be presented for judicial review unless it is first presented to the authority prior to the effective date of the authority's decision.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.050 License required for medical marijuana establishments.**

- A. No person shall operate a medical marijuana establishment within the city without a valid license issued in accordance with this chapter.
- B. Except as expressly modified herein, any requirements set forth in this chapter shall be in addition to, and not in lieu of, any other requirements imposed by any state or local law.
- C. The issuance of any license pursuant to this chapter does not create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution or possession of marijuana.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.060 Application for license.**

- A. An applicant seeking to obtain a license pursuant to this chapter shall file an application by appointment with the city clerk or deputy city clerk at city offices between the hours of 8:00 a.m. to 5:00 p.m. on regular city business days. The application shall be on forms provided by the state and the city, as approved by the city attorney, and shall include all information required by the Colorado Medical Marijuana Code and any additional information requested by the city clerk if such information, in his or her opinion, is reasonably necessary to complete the investigation and review of the application.
- B. At the time of application, the applicant shall pay a non-refundable application fee, as well as a non-refundable consultant reimbursement fee to defray the costs incurred by the city for background investigations, legal review, and any other third-party consultant costs incurred by the city in processing of the application. An applicant shall also submit at the time of application all applicable license fees, which may be refunded if the application is later denied or withdrawn.
- C. At the time of application, each applicant shall present a suitable form of identification and the following information, which information may be required for the applicant, the proposed manager of the medical marijuana establishment, and all persons having a financial interest in the business that is the subject of the application or, if applicant is an entity, holding a one percent or more of the issued and outstanding capital stock or other ownership interest of the entity:
  - 1. Name, address, and date of birth of the owner(s) and any managers of the applicant;
  - 2. If the owner is a corporation, partnership, limited liability company, or other business entity, the name(s), social security number(s), and address(es) of any officer or director of the entity and of any person holding any of the issued and outstanding capital stock or other ownership interest of the entity.
  - 3. A completed set of the fingerprints of each person specified in subsections 1 and/or 2 of this Section 5.44.060(C).

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4. A statement of whether or not any person holding any ownership interest in the proposed medical marijuana establishment has:
    - a. Been denied an application for a medical marijuana establishment license or retail marijuana establishment license by the state or any other local jurisdiction in the state, or has had such a license suspended or revoked; and
    - b. Been convicted of a felony or has completed any portion of a sentence due to a felony charge within the preceding five years.
  5. Proof that the applicant has paid all application and other applicable fees.
  6. If applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the Colorado Secretary of State, as applicable;
  7. An acknowledgement and consent that the city may conduct a background investigation, including a criminal history check, and that the city will be entitled to full and complete disclosure of all financial records of the applicant, including records of deposit, withdrawals, balances, and loans;
  8. A copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of applicant to possess, the proposed licensed premises;
  9. If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a medical marijuana establishment and authorizing the city to enter the property for inspection of the proposed licensed premises on a form approved by the city;
  10. Evidence of a valid city and state sales tax license for the business;
  11. Proof that the proposed medical marijuana establishment will be located in a location that permits such land use under this chapter and other applicable provisions of this code;
  12. An area map, drawn to scale, indicating, within a radius of one-quarter mile from the boundaries of the property upon which the medical marijuana establishment is proposed to be located, the distance between the medical marijuana establishment and any school or youth and family prevention business, measured in feet. If the application seeks licensure for a medical marijuana center, the map shall also indicate, within a radius of one-quarter mile from the boundaries of the property upon which the medical marijuana establishment is proposed to be located, the distance between the proposed medical marijuana center and any other medical marijuana center or retail marijuana store for which a license has been approved or issued, measured in feet.
  13. A "to scale" diagram of the proposed licensed premises, no larger than eleven (11) inches by seventeen (17) inches, showing, without limitation, building layout, all interior dimensions of the proposed licensed premises, including all limited access areas, areas of ingress and egress from the proposed licensed premises, loading zones, all areas in which marijuana will be grown, stored, manufactured, processed, tested, and/or sold, and location(s) of all security cameras. Such diagram shall also show the principal uses of the floor area depicted therein, and shall include separate pages for each floor level if applicable.
  14. A comprehensive business operation plan for the medical marijuana establishment that shall contain, at a minimum, the following:
    - a. A security plan indicating how the applicant intends to comply with the requirements of this chapter, the Colorado Medical Marijuana Code, and any other applicable law, rule or regulation as adopted and amended. The security plan shall include specialized details of security arrangements.

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- b. A description of the products and services to be provided and/or sold by the medical marijuana establishment.
  - c. A plan for exterior signage that complies with all applicable requirements of this code, including photographs and/or illustrations of proposed signage.
15. Any additional information that the authority reasonably determines to be necessary in connection with the investigation and review of the application.
- D. A license issued pursuant to this chapter does not eliminate the need for the licensee to obtain other required city licenses and licenses related to the operation of the approved medical marijuana establishment, including, without limitation:
- 1. Any required land use approval, if applicable;
  - 2. A city business and sales tax license; and
  - 3. Any building permits, including mechanical, plumbing license or electrical license.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.070 Co-location with retail marijuana businesses.**

A person may operate both a medical marijuana business and a retail marijuana business license in the same premises ("dual operation") provided they meet the requirements of the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, and this code.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.080 Fees.**

- A. The city council shall fix by resolution the amount of the application fee, as well as fees for consultant reimbursement, licensing, operations (including but not limited to building inspection and re-inspection fees), renewals, late filing, transfers of ownership, changes of location, premises modifications, and all other fees necessary for the administration, regulation, and implementation of this chapter.
- B. At least annually, the city council may review the amount of fees charged pursuant to this chapter and, if necessary, may adjust such fees to reflect the direct and indirect costs incurred by the authority and the city in connection with the administration and enforcement of this chapter, including costs of unannounced compliance checks. The council shall adjust such fees by resolution.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.090 Investigation of application.**

Upon receipt of an application for a medical marijuana establishment license, transfer of ownership, or change of location, the city clerk shall determine whether the application is complete and notify the applicant of any deficiencies. Upon receipt of a properly completed application, together with all information required in connection therewith and the payment of all fees as required by this chapter, the city clerk shall circulate copies of the application to the administrative services department, the police department, the fire department, the building official and to any other city department the clerk deems necessary in order to determine whether the proposed licensee and premises is in compliance with any and all applicable local laws, rules and regulations.

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#### **5.44.100 Maximum number of medical marijuana establishments.**

- A. Each class of medical marijuana establishment located and operating within the city shall be limited in number as follows:
  - 1. Medical marijuana center: No more than one license;
  - 2. Medical marijuana optional premises cultivation operation: No more than two licenses;
  - 3. Medical marijuana-infused product manufacturer: No more than one license.
- B. The city clerk shall keep accurate records of the number of licenses issued for each class of medical marijuana establishment. Licenses shall be processed based on submittal date of a complete application. Licenses issued for a medical marijuana establishment and a retail marijuana establishment for dual operation at the same location shall be counted separately for purposes of this section in determining the maximum number of licenses.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.110 Persons prohibited as licensees and managers.**

- A. It shall be unlawful for any of the following persons to have an ownership or a financial interest in a medical marijuana establishment, and no license provided by this chapter shall be issued to, or held by, and no medical marijuana establishment shall be managed by:
  - 1. Any person until all applicable fees for the license have been paid;
  - 2. Any person not of good moral character;
  - 3. Any corporation, partnership, limited liability company, or other entity whose officers, members, partners, directors or stockholders are not of good moral character;
  - 4. Any natural person who is under twenty-one (21) years of age;
  - 5. Any person who, in the immediately preceding twelve (12) months had a medical marijuana facility license or retail marijuana establishment license revoked or suspended by the state, or by a local licensing authority in the city or any other jurisdiction;
  - 6. Any person who has been convicted of a felony that is deemed a crime of violence or has completed any portion of a felony sentence within the preceding five years;
  - 7. A person licensed pursuant to this chapter who, during a period of licensure, or who, at the time of application, has failed to remedy an outstanding delinquency for taxes owed, or an outstanding delinquency for judgments owed to a government;
  - 8. A sheriff, deputy, police officer, or prosecuting officer, or an officer or employee of the state licensing authority, the authority, or the city; or
  - 9. Any other person prohibited as a licensee pursuant to the Colorado Medical Marijuana Code.
- B. All natural persons, corporations, partnerships, limited liability companies, and other entities are prohibited from holding or having a financial interest in more than one local medical marijuana establishment per class of license.

(Ord. No. 2016-1, § 2, 4-19-16)

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#### **5.44.120 Location restrictions imposed.**

Prior to approving an application for a medical marijuana establishment license, the authority shall determine whether the proposed location of the medical marijuana establishment complies with the requirements of this section and Title 17 of this code. Failure to comply with the requirements of this section shall preclude approval and issuance of a license.

- A. Each medical marijuana establishment shall be operated from a permanent location. No medical marijuana establishment shall be permitted to operate from a moveable, mobile or transitory location.
- B. A medical marijuana establishment may be located only on property as allowed in the table of uses in Section 17.48.010 of the Leadville Municipal Code.
- C. No medical marijuana establishment license shall be issued for a location within five hundred (500) feet of a school or youth and family prevention business.
- D. No medical marijuana center may be located within five hundred (500) feet of another medical marijuana center. Notwithstanding this prohibition, nothing in this section shall prohibit medical marijuana establishments of different classes from being located on the same lot, subject to the other provisions of this chapter.
- E. The foregoing distance requirements shall be computed by direct measurement in a straight line from the nearest property line of the land used for a school or youth and family prevention business to the nearest portion of the building in which the medical marijuana establishment is proposed to be located using a route of direct pedestrian access. The requirements of this section shall not be applied to a premises where any person was previously issued a license pursuant to this chapter.
- F. The distance requirements set forth in this section shall be enforced in lieu of the distance requirements set forth in the Colorado Medical Marijuana Code.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.130 Public hearing requirement.**

- A. Prior to making a decision on an initial application or on an application for a transfer of ownership or change of location, the authority shall hold a public hearing not less than thirty (30) days after receiving a complete application. The city clerk shall set the date and time and send written notice of the hearing to the applicant by regular mail, postage prepaid. The authority shall post notice of such public hearing on the proposed premises and shall publish public notice thereof not less than ten (10) days prior to the hearing. Public notice shall be given by the posting of a sign in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation.
- B. Notice given by posting shall include a sign of suitable material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one inch in height and stating the type of license applied for, the date of the application, the date of the hearing, and the name and address of the applicant.
- C. Notice given by publication shall contain the same information as that required for signs.
- D. If the building in which licensed medical marijuana business is to occur is in existence at the time the application is filed, any sign posted as required in this section shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time the application is filed, the applicant shall post the premises upon which the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.

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- E. Not less than five days prior to the public hearing, authority staff shall provide to the applicant preliminary written findings concerning the application based upon its investigation. Authority staff shall provide such preliminary written findings to other parties of interest upon their request. Preliminary written findings shall not constitute a decision of the Authority concerning approval or denial of an application.
  - F. The authority will hear testimony and evidence from parties in interest at the public hearing concerning the following issues:
    - 1. Whether the applicant has violated, does not meet, or has failed to comply with the Colorado Medical Marijuana Code, any rules and regulations promulgated pursuant thereto, or the requirements of this chapter and of the Colorado Medical Marijuana Code;
    - 2. Whether the issuance of the license will adversely impact the health, safety, or welfare of the residents of the city; and
    - 3. For applications seeking licensure of any medical marijuana establishment in the same location where any medical or retail marijuana establishment is or has previously been licensed, whether the licensed premises have been previously operated in a manner that adversely affects the public health, safety, or welfare of the residents of the city.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.140 Decision on application.**

- A. The authority may approve an application and issue a license under this chapter when, after thorough consideration of the application, and from review of such other information as required by this chapter or the Colorado Medical Marijuana Code, the authority determines that the applicant complies with all of the requirements of this chapter and the Colorado Medical Marijuana Code, including the following:
  - 1. The application, including any required attachments and submissions, is complete and signed by the applicant;
  - 2. The applicant has paid the application fee and any other fees required by this chapter;
  - 3. The application does not contain a material falsehood or misrepresentation;
  - 4. The medical marijuana establishment is proposed to be located in a location permitted by this chapter and other applicable provisions of this code;
  - 5. The criminal history of the applicant, and the applicant's owners, officers, and managers, does not disqualify the applicant from holding a license;
  - 6. The issuance of the license will not adversely impact the health, safety, or welfare of the residents of the city in terms of noise, odor, traffic, or other negative impacts; and
  - 7. The applicant meets or otherwise will meet all the requirements of this chapter and the Colorado Medical Marijuana Code, including but not limited to Section 12-43.3-307, C.R.S., and any rules or regulations promulgated pursuant thereto.
- B. Prior to approving any application for a license, the authority shall make a finding and determination as to the good moral character of the applicant in accordance with the standards and procedures set forth in the Colorado Medical Marijuana Code. In so doing, the authority may incorporate any findings as to good moral character previously made by the state licensing authority. The authority shall not be required to perform a criminal background check: (i) if the state licensing authority has performed a criminal background check on the applicant to the satisfaction of the authority; or (ii) if the authority issues a license conditioned on the completion and successful review of the criminal background check prior to the approval of the license.

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In evaluating the good moral character of the individual identified on an application or amendment thereof, the authority shall consider the following:

1. Laws, rules and regulations applicable to evaluation of other types of licenses issued by governments that consider the good moral character of the applicants;
  2. Any findings as to good moral character previously made by the state licensing authority; and
  3. Any additional information the authority may request of the individual if the individual has a violation of any laws, or items disclosed by the individual which require additional information in order for the authority to make a determination regarding issuance of the license.
- C. Prior to approving any application for a license, the authority shall make a finding and determination as to whether the building in which the medical marijuana is to be sold is located within any location restrictions established by this code. The authority may impose reasonable terms and conditions on a license as may be necessary to protect the public health, safety and welfare, or to ensure compliance with the requirements of this chapter, the Colorado Medical Marijuana Code, or other applicable law.
- D. The authority shall issue its decision approving or denying an application for local licensure within thirty (30) days after the public hearing. The decision and the reasons for the decision, as well as any conditions of approval, shall be in writing. The city clerk shall send a copy of the decision to the applicant by certified mail at the mailing address shown in the application. A license application shall not be deemed approved if the authority fails to render a decision on such application within the time specified in this subsection D.
- E. The authority shall deny any application for a license that does not comply with this chapter, the Colorado Medical Marijuana Code, or any other applicable state or local law or regulation. The authority may also deny a license when it finds any of the following circumstances to exist:
1. The applicant fails to cooperate with the city during the application phase;
  2. The applicant fails to meet all of the standards set forth in this chapter;
  3. The applicant fails to provide any application materials to the city in accordance with Section 5.44.060 above;
  4. The applicant provides inaccurate or false information to the city during the application phase;
  5. The applicant fails to obtain any other required city license or approval, including but not limited to those required by Section 5.44.060(D) above;
  6. The applicant has violated, does not meet, or has failed to comply with the Colorado Medical Marijuana Code, regulations adopted pursuant thereto, or city medical marijuana establishment regulations;
  7. The issuance of the license will adversely impact the health, safety, or welfare of the citizens of the city in terms of noise, odor, traffic, or other negative impacts; or
  8. The medical marijuana establishment operated in the location in question was previously operated in a manner that adversely affected the public health, safety, or welfare of the citizens of the city.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.150 Inspection of premises.**

- A. After approval of an application and prior to the issuance of a license, the premises proposed to be licensed shall be inspected by the building official and fire chief to determine compliance with the city's building and technical codes set forth in Title 15 of this code and with the drawings and schematics submitted with the application. The authority shall not issue a license if the proposed licensed premises does not comply with

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the application drawing and schematics, or comply with the city's building and technical codes as identified by the building official in writing provided to the applicant. Throughout the term of the license, the building official may inspect the licensed premises to determine continuing compliance with the city's building and technical codes.

- B. An application approval shall expire if the applicant fails to fulfill all conditions and requirements for license issuance by the earlier of either two years from the date of approval of a conditional use permit for the proposed licensed premises or two years from the date of the written decision approving the application. An application with an expired approval shall be deemed null and void, and the city shall take no further action on such application.
- C. In the event that a medical marijuana establishment does not commence operations within two hundred forty (240) days of issuance of a license from the city, the license shall be deemed forfeited and the business may not commence operations.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.160 Contents of license.**

- A. A license shall contain the following information:
  - 1. The name of the licensee;
  - 2. The date of the issuance of the license;
  - 3. The address at which the licensee is authorized to operate the medical marijuana establishment;
  - 4. Any special conditions of approval imposed upon the license by the authority, pursuant to notice of decision, as follows; and
  - 5. The date of the expiration of the license.
- B. A license must be signed by both the applicant and the city clerk to be valid.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.170 License non-transferable; exceptions; dual licenses.**

- A. A licensee may transfer or assign all ownership, rights and interests in a license subject to prior application to and approval by the city clerk and compliance with Section 12-43.3-309, C.R.S. Transfer applications shall be subject to a public hearing as set forth in Section 5.44.130 of this code. Any attempt to transfer or assign a license in violation of this section voids the license.
- B. A license issued under this chapter shall not preclude the operation of a licensed medical marijuana establishment as the same licensed premises for dual operation subject to the requirements of this chapter, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code.
- C. A licensee of a medical marijuana establishment may change the location of its licensed premises subject to approval of an application for a change in location submitted to the state and the authority and licensee's compliance with the Colorado Medical Marijuana Code and this chapter.

(Ord. No. 2016-1, § 2, 4-19-16)

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#### **5.44.180 Duration of license; renewal; late renewal.**

- 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 this section.
- B. A licensee shall renew their license issued pursuant to this chapter annually. Any renewal of the license shall be governed by the standards and procedures set forth in the Colorado Medical Marijuana Code, subject to any additional restrictions on renewal as provided in this chapter or promulgated by the authority.
- C. An application for the renewal of an existing license shall be made to the city clerk at least forty-five (45) days prior to the date of expiration. The licensee shall apply for renewal using forms provided by the city. If the applicant fails to apply for renewal at least forty-five (45) days before the expiration of the license, but does apply for renewal prior to expiration of the license, the city may process the renewal application if the applicant submits the late filing fee established pursuant to Section 5.44.080 at the time of submittal of the renewal application. The process for renewal shall be administrative, in accordance with Section 12-43.3-311, C.R.S., provided that any decision not to renew shall be made by the Authority in accordance with the requirements set forth in Section 12-43.3-311, C.R.S.
  - 1. The renewal license fee, and late filing fee if applicable, shall accompany the application. Such fee is nonrefundable.
  - 2. In the event there has been a change to any of the plans identified in the license application, including but not limited to the operating plan or security plan, the renewal application shall include specifics of the changes or proposed changes in any of such plans.
  - 3. The renewal application shall include verification that the medical marijuana establishment has a valid state license issued by the state licensing authority, and that such license is in good standing.
  - 4. A licensee whose license has expired for not more than ninety (90) days may file an expired license renewal application, upon applicant's payment of a late filing fee established pursuant to Section 5.44.080. A licensee who files such application and pays the late filing fee may continue to operate until both the state and the city have taken final action to approve or deny the late renewal application unless the authority summarily suspends the license. If more than ninety (90) days have elapsed since the expiration of a permanent annual license, the licensee must file a new license application.
- D. Failure of the licensee to renew and keep its state or local license current and valid or to make timely payment of the local licensing or operating fees shall be grounds for revocation of any license issued pursuant to this chapter.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.190 Duties of licensee; records to be maintained.**

It is the duty and obligation of each licensee to do the following:

- A. Comply with all of the terms and conditions of the license;
- B. Comply with all of the requirements of this chapter;
- C. Comply with all other applicable city ordinances;
- D. Comply with the Colorado Medical Marijuana Code;
- E. Comply with all state laws and administrative regulations pertaining to the medical use of marijuana;

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- F. 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 which conflicts with Amendment 20;
  - G. Permit inspection of its records and licensed premises by authorized city staff including law enforcement officers for the purpose of determining the licensee's compliance with the terms and conditions of the license; and
  - H. Post the license in a conspicuous location at the medical marijuana establishment.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.200 Non-renewal, suspension or revocation of license.**

- A. A license issued pursuant to this chapter may be suspended, fined, restricted, or revoked by the authority for the following reasons:
  - 1. Fraud, misrepresentation or a false statement of material fact contained in the license application;
  - 2. A violation of any city, 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 license;
  - 4. A violation of any law which, if occurring prior to the submittal of the application, could have been cause for denial of the license application;
  - 5. Failure to timely correct any violation of any law, or comply with any order to correct a violation of any law within the time stated in the notice or order;
  - 6. A violation of any of the provisions of this chapter including but not limited to any violation of the duties set forth in Section 5.44.200; or
  - 7. Good cause.
- B. Hearing, Burden of Proof.
  - 1. The city clerk or the police chief may request in writing that a license issued under this chapter be suspended or revoked. The authority also may, on its own motion or on complaint, after investigation and opportunity for a public hearing, impose revocation or suspension of a license. The written request or complaint to suspend or revoke must include the allegations upon which the suspension or revocation is based and must be provided to the licensee.
  - 2. The city council, sitting in its official capacity as the authority, shall preside over the public hearing on the suspension or revocation.
  - 3. The date and time of the hearing must be set, written notice of which must be sent by regular mail, postage prepaid, to the licensee at least ten (10) days prior to the hearing date.
  - 4. Notice of the public hearing shall comply with any other applicable provisions of the Colorado Medical Marijuana Code.
  - 5. The hearing must be conducted based on the allegations provided in the written request or complaint. The burden shall be on the city to prove by a preponderance of the evidence that the licensee has violated the provisions of subsection A above.
  - 6. The authority will hear testimony and evidence from parties in interest at the public hearing.
  - 7. A written decision must be provided to the licensee within ten (10) business days of the conclusion of the hearing. Notice shall be given by mailing a copy of the decision to the licensee by regular mail,

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postage prepaid, at the address shown in the license. Notice is deemed to have been properly given upon mailing.

- C. In connection with the suspension of a license, the authority may impose reasonable conditions. The authority shall be authorized to enter into stipulations with any licensee at or following the public hearing.
- D. In the event a medical marijuana establishment or licensee is charged with violation of any law, upon which a final judgment would be grounds for suspension or revocation of the license, the authority may suspend the license pending the resolution of the alleged violation.
- E. If the authority revokes or suspends a license, the medical marijuana establishment may not move or remove any marijuana from the premises except under the supervision of the police department.
- F. Any decision made by the authority 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 licensee's failure to timely appeal the decision is a waiver of the licensee's right to contest the suspension or revocation of the license.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.210 Prohibited acts.**

- A. It shall be unlawful to cultivate marijuana on or within the licensed premises of a medical marijuana center. For purposes of this subsection, "premises" shall mean all areas in which the center is authorized to conduct business activities related to the license including, but not limited to, a building, part of a building, room, or other definite contiguous area.
- B. It shall be unlawful to grow, cultivate, manufacture, prepare, process or package marijuana or marijuana products for personal use anywhere in the city other than an enclosed space within a primary residence which is not open or public in conformance with the Colorado Medical Marijuana Code and any applicable provisions of this code.
- C. It shall be unlawful for any licensee to permit the sale or consumption of alcoholic beverages, as defined in the Colorado Liquor Code, on the licensed premises.
- D. It shall be unlawful to smoke, eat, or otherwise consume or ingest marijuana on the licensed premises.
- E. It shall be unlawful for any medical marijuana establishment to employ any person at a licensed premises who is younger than twenty-one (21) years of age.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.220 Medical marijuana establishment requirements and restrictions.**

- A. Medical marijuana centers approved pursuant to this chapter shall not sell, serve, or distribute marijuana at any time other than between the hours of 8:00 a.m. and 12:00 p.m., Monday through Sunday.
- B. The licensee shall post the medical marijuana establishment license, the business license, and the sales tax license in the facility in a conspicuous location.
- C. The licensee shall post the name and contact information for the owner or owners and any manager of the medical marijuana establishment in the facility, together with the name and contact information of any person designated by the owner to be contacted in the event of an emergency. Such posting shall be in a conspicuous location.
- D. There shall be posted in a conspicuous location in each medical marijuana establishment a legible sign containing the following warnings:

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1. A warning that the diversion of marijuana for nonmedical purposes is a violation of state law;
  2. 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;
  3. A warning that loitering in or around the medical marijuana establishment is prohibited by state law; and
  4. A warning that possession and distribution of marijuana is a violation of federal law.
- E. No change shall be made to the floor plan of the interior of any licensed premises unless such modification is approved by the authority and all other appropriate city departments prior to the time the change is made. The authority may charge a processing and inspection fee to cover any processing or inspection costs.
- F. The licensed premises shall be monitored and secured twenty-four (24) hours a day in compliance with the Colorado Medical Marijuana Code and including, at a minimum, the following security measures:
1. Installation and use of security cameras to monitor all areas of the licensed premises where persons may gain or attempt to gain access to marijuana, marijuana products, or monies maintained by the facility.
  2. Video surveillance shall be compliant with the Colorado Medical Marijuana Code, including but not limited to, Rule 306 adopted by the Department of Revenue.
  3. Installation and use of a safe for overnight storage of any marijuana or marijuana products, and/or monies on the licensed premises, with the safe being incorporated into the building structure or securely attached thereto.
  4. Installation of a monitored user alarm system compliant with the Colorado Medical Marijuana Code and any other applicable state or local regulations.
  5. Robbery and burglary alarm systems that are professionally installed, monitored and maintained in good working condition.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.230 Visibility of activities; control of emissions.**

- A. All activities of medical marijuana establishments, including, without limitation, cultivating, growing, processing, displaying, manufacturing, selling, testing, and storage, shall be conducted out of public view.
- B. No marijuana or paraphernalia shall be displayed or kept in a medical marijuana establishment so as to be visible from outside the licensed premises.
- C. A medical marijuana establishment shall be ventilated so that the odor of marijuana cannot be detected by a person with a normal sense of smell at the exterior of the medical marijuana establishment or at any adjoining use or property. Medical marijuana cultivation facilities must implement appropriate ventilation and filtration systems to satisfy the odor nuisance standard.
- D. During nighttime hours, medical marijuana cultivation facilities shall not emit more than 0.1 foot-candle of light measured at a point ten (10) feet beyond any property line as a result of interior lighting, regardless of what type or types of lighting are used. Medical marijuana cultivation facilities shall install, aim, shield, and maintain all interior lighting and take other appropriate measures to satisfy this light trespass standard.
- E. The licensee shall provide sufficient measures and means of preventing smoke, debris, dust, fluids and other substances from exiting a medical marijuana establishment at all times, in accordance with this code and all applicable state law and regulations. In the event that any odors, light, debris, dust, fluids or other

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substances exit a medical marijuana establishment, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

- F. In the event the city incurs costs in the inspection, clean-up, or any other measures to remove marijuana from any medical marijuana establishment, the licensee shall reimburse the city all actual costs incurred by the city for such inspection, clean-up, or other measures.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.240 Signage and advertising.**

All signage for a medical marijuana establishment shall comply with the requirements of Chapter 17.80 of this code and the Colorado Medical Marijuana Code.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.250 Taxes.**

Each licensee shall pay sales tax on all medical marijuana, paraphernalia and other tangible personal property sold by the licensee at the medical marijuana establishment.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.260 Penalties; injunctive relief.**

- A. It is a municipal 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 1.20 of this code.
- B. In addition to all other remedies available to the city under this code and by law, the operation of a medical marijuana establishment without a valid license issued pursuant to this chapter may be enjoined by the city in an action brought in a court of competent jurisdiction.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.270 No waiver of governmental immunity.**

In adopting this chapter, the city council is relying on and does not waive or intend to waive by any provision of this chapter the monetary or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., or any other limitation, right, immunity or protection otherwise available to the city, its officers or its employees.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.280 No city liability.**

By accepting a license issued pursuant to this chapter, a licensee releases the city, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that

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result from any arrest or prosecution of establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.290 Indemnification of city.**

By accepting a license issued pursuant to this chapter, a licensee, jointly and severally if more than one agrees to indemnify and defend the city, 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 establishment that is the subject of the license. The licensee further agrees to investigate, handle, respond to and 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.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.300 Other laws remain applicable.**

The provisions of this chapter do not protect licensees, operators, employees, customers and clients of a licensed medical marijuana establishment 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. Licensees, operators, employees, customers and clients of a licensed medical marijuana establishment assume any and all risk and any and all liability arising or resulting from the operation of the establishment under any state or federal law. Further, to the greatest extent licensed by law, any actions taken under the provisions of this chapter by any public officers, elected or appointed officials, employees, attorneys and agents of the city shall not become a personal liability of such person or of the city.

(Ord. No. 2016-1, § 2, 4-19-16)

#### **5.44.310 Compliance with state law.**

Except as otherwise provided herein, the local licensing authority shall be governed by the Colorado Medical Marijuana Code now in effect or subsequently amended. In the event of a conflict between the provisions of this chapter and those in the Colorado Medical Marijuana Code, the more stringent provision shall apply.

(Ord. No. 2016-1, § 2, 4-19-16)