

**ORDINANCE NO. 11
SERIES 2013**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, AMENDING TITLE 15 (LAND DEVELOPMENT CODE), OF THE CITY OF GUNNISON MUNICIPAL CODE ESTABLISHING STANDARDS FOR THE HOME CULTIVATION AND PERSONAL PROCESSING OF MARIJUANA, AND PROHIBITING MARIJUANA CLUBS.

WHEREAS, Colorado voters approved an amendment to Article XVIII, Section 16 of the *Colorado Constitution* that makes the personal use, possession and limited home growing of marijuana for adults twenty-one years of age or older legal under Colorado law; and

WHEREAS, under Article XVIII, Section 16(3) of the *Colorado Constitution*, any person who is twenty-one years of age or older may possess, grow, process or transport no more than six marijuana plants, with three or fewer being mature flowering plants, provided that the growing takes place in an enclosed locked space, is not conducted publicly or openly and is not made available for sale; and

WHEREAS, Gunnison City Ordinance No. 2, Series 2011, prohibits the use of land in the city boundaries for the retail sale, distribution, cultivation and dispensing of medical marijuana and the processing and sale of infused products; and

WHEREAS, Gunnison City Ordinance No. 2, Series 2013, defines offenses and penalties related to personal marijuana use, possession and cultivation and prohibits the sale of marijuana without a license; and

WHEREAS, Gunnison City Ordinance No. 6, Series 2013, prohibits the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores within the City limits; and

WHEREAS, the City Council has carefully considered the provisions of Article XVIII, Section 16(3) of the *Colorado Constitution*, and the impact of marijuana cultivation, processing and consumption for personal use in residential structures on the health, safety and welfare of the City and the inhabitants thereof, and has determined, as an exercise of its local land use authority, to regulate such activity in residential structures in a manner consistent with the City land use regulations; and

WHEREAS, the Governor's Task Force recommendations (March 13, 2013) find that the use of compressed, flammable gases (including butane, propane and hexane) as solvents in the extraction of THC in a residential setting presents a significant life-safety risk concern to the citizens of the State of Colorado and the City of Gunnison; and

WHEREAS, the City Council has considered whether the consumption of marijuana and marijuana products in commercial or industrial buildings, such as in marijuana "clubs" may be inconsistent with surrounding uses, or may otherwise be detrimental to the public health, safety and welfare; and

WHEREAS, the City Council has considered whether the existence of marijuana "clubs" in residential areas is inconsistent with surrounding uses, or may otherwise be detrimental to the public health, safety and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:

Section 1. Findings. The City Council hereby finds as follows:

A. Article XVIII, Section 16(3) of the *Colorado Constitution* sets forth certain broad directives for marijuana cultivation, processing and consumption for personal use in residential structures, without any specific legislative directive at this time, and the City Council finds and determines that this ordinance complies with the broad directives under the Colorado Constitution; and

B. The City Council finds and determines that the adoption of Ordinance 2, Series 2011, prohibited retail activities for medical marijuana by prohibiting the establishment of medical marijuana centers, optional premises cultivation operation and medical marijuana-infused product manufacturers within the City of Gunnison; and

C. The City Council finds and determines that the adoption of Ordinance No. 2, Series 2013, defines offenses and penalties related to personal marijuana use, possession and cultivation and prohibits the sale of marijuana; and

D. The City Council finds and determines that the adoption of Ordinance No. 6, Series 2013, prohibits the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores within the City limits; and

E. The City Council finds and determines that the Governor's Task Force (March 13, 2013) established that the use of compressed, flammable gases (including butane, propane and hexane) as solvents in the extraction of THC in a residential setting presents a significant life-safety risk to the citizens of the State of Colorado; and

F. The City Council finds that processes, methods, and certain materials used for growing, cultivating, and processing marijuana may present life-safety risks to citizens which risks may be reduced by the regulation of marijuana growth and cultivation; and

G. The City Council finds and determines that the consumption of marijuana and marijuana products in commercial or industrial buildings, such as in marijuana "clubs" may be detrimental to the public health, safety and welfare; and

H. The City Council finds and determines that the existence of marijuana "clubs" in residential areas is inconsistent with surrounding uses, or may otherwise be detrimental to the public health, safety and welfare.

I. The City Council finds that the Colorado Legislature passed a bill allowing municipal fines up to \$2,650 and one year in jail for violations.

Section 2. Authority. The City Council hereby finds, determines, and declares that it has the power and authority to adopt this Article pursuant to:

A. Article XVIII, Section 16 of the *Colorado Constitution*;

B. The authority granted to home rule municipalities by Article XX of the *Colorado Constitution*;

C. The powers contained in the *City of Gunnison Home Rule Charter*.

D. The *Local Government Land Use Control Enabling Act*, Article 20 of Title 29, *C.R.S.*;

E. Part 3 of Article 23 of Title 31, *C.R.S.*, (concerning municipal zoning powers);

F. Section 31-15-101, *C.R.S.*, (concerning municipal bodies politic powers);

G. Section 31-15-401, *C.R.S.*, (concerning municipal police powers); and

H. Section 31-15-501, *C.R.S.*, (concerning municipal authority to regulate businesses).

Section 3. Definitions. Section 15.40.010, Definitions, of the *City of Gunnison Municipal Code* is hereby amended by the addition of the following definitions:

“Colorado Medical Marijuana Code” means Article 43.3 of Title 12, *Colorado Revised Statutes*.

“Consumer” means a person twenty-one years of age or older who purchases marijuana or marijuana products for personal use by persons twenty-one years of age or older, but not for resale to others.

“Industrial hemp” means the plant of the genus *cannabis* and any part of such plant, whether growing or not, with Delta-9 Tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.

“Marijuana” or “Marihuana” means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. “Marijuana” or “Marihuana” does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topic or oral administrations, food, drink or other product.

“Marijuana accessories” means any equipment, products, or material of any kind which are used, intended for use, or designed for the use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

“Marijuana club” means a place of private assembly, operated for purposes of inviting members to use or consume marijuana on site.

“Marijuana cultivation facility” means an entity licensed to cultivate, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

“Marijuana establishment” means marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility, or retail marijuana store.

“Marijuana product manufacturing facility” means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

“Marijuana products” means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

“Marijuana testing facility” means an entity licensed to analyze and certify the safety and potency of marijuana.

“Medical marijuana center” means an entity licensed by a state agency to sell marijuana and marijuana products pursuant to Article XVIII, Section 14 of the *Colorado Constitution* and the *Colorado Medical Marijuana Code*.

“Primary residence” means the place that a person or family member, by custom and practice, makes his or her principle domicile and address and to which the person or family member intends to return, following any temporary absence, such as vacation. Residence is evidenced by actual daily physical presence, use, and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration, or credit, water and utility billing. A person or family member shall have only one primary residence.

“Retail marijuana store” means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

“Secure area” means an area within the primary residence or associated accessory structure accessible only to the person possessing, growing or processing the marijuana plant for personal use. Secure areas shall be partitioned space with doors, walls, ceilings and floors constructed with rigged wood, sheet rock or other typical construction materials and locked to prevent access by children, visitors, casual passersby, vandals, or anyone not authorized to possess marijuana.

Section 4. Uses in Residential Zone Districts. Table 15.70.010: Schedule of Uses – Residential Zone Districts, of the *City of Gunnison Municipal Code*, is hereby amended to read as follows:

Table 15.70.010: Schedule of Uses – Residential Zone Districts

(A=Allowed, C=Conditional, P=Prohibited)	R-1	R-1M	R-2	R-2M	R-3	Standards*
Residential Uses						
Accessory buildings and structures	A	A	A	A	A	
Accessory dwelling unit	P	P	C	C	C	GMC 15.70.020(A)
Duplex dwelling units	P	P	A	A	A	
Multiple-family units	P	P	P	A	A	
Single-family dwelling unit	A	A	A	A	A	
Manufactured housing	A	A	A	A	A	GMC 15.70.020(B)
Mobile home park	P	P	P	P	C	GMC 15.70.020(C)
Recreational vehicle park	P	P	P	P	C	GMC 15.70.020(D)
Rooming or boarding house, fraternity, sorority or dormitory	P	P	P	C	C	
Personal use of marijuana	A	A	A	A	A	GMC 15.70.020(I)
Residential Business Uses						
Daycare home	C	C	A	A	A	GMC 15.70.020(E)

Table 15.70.010: Schedule of Uses – Residential Zone Districts

(A=Allowed, C=Conditional, P=Prohibited)	R-1	R-1M	R-2	R-2M	R-3	Standards*
Daycare school	P	P	C	C	C	GMC 15.70.020(E)
Daycare center	P	P	C	C	C	GMC 15.70.020(E)
Home occupation	A	A	A	A	A	GMC 15.70.020(F)
Home business	C	C	C	C	C	GMC 15.70.020(F)
Medical marijuana centers	P	P	P	P	P	
Medical marijuana-infused products manufacture	P	P	P	P	P	
Optional premises cultivation operation	P	P	P	P	P	
Marijuana cultivation facility	P	P	P	P	P	
Marijuana establishment	P	P	P	P	P	
Marijuana product manufacturing facility	P	P	P	P	P	
Marijuana testing facility	P	P	P	P	P	
Retail marijuana store	P	P	P	P	P	
Clubs/Public Assembly/Institutional Uses						
Church, parish home and religious education building	C	C	C	C	C	
Clubs operated by and for their members	C	C	C	C	C	
Marijuana club	P	P	P	P	P	
Community buildings and uses	C	C	C	C	C	
Government administrative facilities, services, and buildings	P	P	P	P	C	
Group home	P	P	P	P	C	GMC 15.70.020(G)
Hospice	P	P	C	C	C	
Hospital	P	P	C	C	C	
Nursing home	P	P	C	C	C	
Parks and recreation facilities	A	A	A	A	A	
Satellite reception device	A	A	A	A	A	GMC 15.70.020(H)
School	C	C	C	C	C	
Notes: *The standards referenced herein are in addition to all other applicable standards of this <i>Land Development Code</i> .						

Section 5. Uses Prohibited in Commercial/Industrial Zone Districts. Table 15.70.030: Schedule of Uses – Commercial/ Industrial Zone Districts, of the *City of Gunnison Municipal Code*, is hereby amended to read as follows:

Table 15.70.030: Schedule of Uses – Commercial/Industrial Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	B-1	CBD	C	I	Standards ¹
Commercial and Office Uses					
Clubs operated by and for their members	C	A	A	P	
Marijuana club	P	P	P	P	
Marijuana establishment	P	P	P	P	
Marijuana retail store	P	P	P	P	

Table 15.70.030: Schedule of Uses – Commercial/Industrial Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	B-1	CBD	C	I	Standards ¹
Commercial lodging	P	C	A	P	
Commercial parking lots and garages	P	C	A	A	
Drive-in facility	P	C	A	P	GMC 15.70.040(A)
Drive-in food or beverage facility	P	C	A	P	GMC 15.70.040(A)
Indoor amusement and entertainment establishments	P	A	A	P	
Indoor and outdoor eating and drinking establishments	C	A	A	C	
Medical marijuana centers	P	P	P	P	
Professional offices	A	A	A	C	
Publishing business	A	A	A	A	
Radio and television studios	A	A	A	A	
Recreational vehicle park	P	P	C	P	
Retail sales establishment	C	A	A	P	GMC 15.70.040(B)
Sexually oriented businesses	P	P	P	A	GMC 15.70.040(D)
Temporary commercial activities	P	C	C	P	GMC 15.70.040(C)
Personal Services					
Bank, credit and loan services	C	A	A	P	
Beauty and barber shop	A	A	A	P	
Catering services	C	A	A	A	
Funeral home and mortuary	P	C	A	P	
Laundry and dry cleaners	P	A	A	C	
Photographic studios	A	A	A	P	
Personal Services (continued)					
Repair and maintenance of small appliances, electronics and sporting goods	P	A	A	A	
Secretarial, copying and related service	A	A	A	A	
Self-service laundromat	P	P	A	P	
Tailor, tack or shoe repair services	P	A	A	C	
Travel agency	A	A	A	P	
General Services					
Agricultural feed and equipment supply store	P	P	C	A	
Automobile sales and rental	P	A	A	A	
Automobile service and repair	P	P	C	A	
Commercial storage of personal property in enclosed storage areas	P	P	P	A	
Commercial storage of personal property in open areas	P	P	P	C	
Gasoline service station and car wash	P	P	A	A	
Kennel	P	P	C	C	
Lumber and building supply store	P	P	C	A	
Mobile home and recreational vehicle sales and service	P	P	C	A	

Table 15.70.030: Schedule of Uses – Commercial/Industrial Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	B-1	CBD	C	I	Standards ¹
Nursery, greenhouses and garden supply	P	P	C	A	
Rental, repair and service of light motorized and nonmotorized tools and equipment and large appliances	C	A	C	A	
Veterinary clinic	P	P	C	C	
Light Industrial Uses					
Bulk laundry, dry cleaning or carpet cleaning plant	P	P	P	C	
Cabinet and carpenter shop	P	P	C	A	
Manufacture or assembly of products from the following previously prepared materials: electronic components and wire, fibers, glass, leather, paper, plastics, textiles and wood	P	P	C	A	
Marijuana cultivation facility	P	P	P	P	
Marijuana product manufacturing facility	P	P	P	P	
Light Industrial Uses (continued)					
Marijuana testing facility	P	P	P	P	
Industrial Hemp production	P	P	P	A	
Medical marijuana-infused products manufacture	P	P	P	P	
Optional premises cultivation operation	P	P	P	P	
Plumbing, heating, electrical, sheet metal, construction or paint contractors	P	C	C	A	
Printing establishments	C	C	C	A	
Satellite or electronic transmitting devices including radio or television stations	P	P	C	C	GMC 15.70.020(H)
Repair, rental, sales, service or storage of heavy equipment, heavy machinery, large appliances and boats	P	P	C	A	
Satellite or electronic reception devices	C	C	C	C	GMC 15.70.020(H)
Sign making and sign sale or repair shop	C	C	A	A	
Upholstery shop	P	C	C	A	
Warehouses and truck terminal	P	P	C	A	
Welding or machine shop	P	P	C	A	
Wholesale businesses	P	C	C	A	
Wood truss manufacture	P	P	C	A	
General Industrial Uses					
Bulk fuel storage facilities and wholesale sales of fuels	P	P	P	C	
Processing of aggregate, mineral, and other subsurface resources	P	P	P	C	
Junk yard, salvage yard, or automobile wrecking yard	P	P	P	C	
Laboratories	P	C	C	C	
Manufacture of chemicals and explosives	P	P	P	C	
Meat processing plant	P	P	C	C	
Ready mix concrete or hot mix plant	P	P	P	C	
Wood processing, including millwork and sawmill	P	P	C	A	

Table 15.70.030: Schedule of Uses – Commercial/Industrial Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	B-1	CBD	C	I	Standards ¹
Tire retreading or vulcanizing shop	P	P	P	C	
General Industrial Uses (continued)					
Yards for stockpiling coal, sand, gravel, and other materials	P	P	P	C	
Airport Uses					
Air cargo terminal	P	P	P	A	
Air passenger terminal, including airline ticketing facilities and ground support facilities; food, personal service, and retail businesses within the terminal	P	P	P	A	
Aircraft sales, rental, repair, service, and storage	P	P	P	A	
Air side facilities such as runways, taxiways and aprons for the arrival and departure of aircraft	P	P	C	A	
Aviation fuel storage, hangars, and air traffic control facilities	P	P	P	A	
Public and Institutional Uses					
Bus station	P	C	C	C	
Church, parish home, and religious education building	C	A	A	P	
Community buildings and uses	C	A	A	P	
Government administrative facilities, services and buildings	C	A	A	A	
Hospital	P	P	C	P	
Nursing home	P	P	A	P	
Parks and recreation facilities	A	A	A	A	
Public parking facilities	P	C	C	C	
School	C	C	C	C	
Residential Business Uses					
Bed and breakfast inn	C	C	C	P	
Daycare home	A	A	A	C	GMC 15.70.020(E)
Daycare school	C	C	C	C	GMC 15.70.020(E)
Daycare center	P	P	C	P	GMC 15.70.020(E)
Home occupation	A	A	A	P	GMC 15.70.020(F)
Home business	A	A	A	P	GMC 15.70.020(F)
Rooming or boarding house ²	C	C	C	P	
Residential Uses					
Personal use of marijuana	A	A	A	A	GMC 15.70.020(I)
Single-family dwelling unit ³	A	C	C	P	
Duplex Dwelling unit ³	A	C	C	P	
Multiple-family dwelling units ³	C	P	C	P	
One or more dwelling units on the same site as a commercial or industrial use ⁴	A	A ³	C	A	

Notes:

1. The standards referenced herein are in addition to all other applicable standards of this *Land Development*

Table 15.70.030: Schedule of Uses – Commercial/Industrial Zone Districts

(A = Allowed, C = Conditional, P = Prohibited)	B-1	CBD	C	I	Standards ¹
<p><i>Code.</i></p> <ol style="list-style-type: none"> 2. Provided county/state health code space and sanitation requirements are met. 3. These uses refer to dwelling units which are the primary use of the property. 4. These dwelling units shall be accessory to a commercial or industrial use. 5. In the CBD, dwelling units on the same site as commercial uses shall only be located off the street level. 					

Section 6. Section 15.70.020, Review standards applicable to particular residential uses, of the *City of Gunnison Municipal Code* is hereby amended by the addition of sub-section (I) which shall read as follows:

(I) Personal Use of Marijuana. Possessing, growing, or processing marijuana in any residential district and any structure with residential dwelling units shall be governed by the following standards.

1. Any person or family member for the purposes of this section and consistent with Article XVIII, Section 16(3)(b) of the *Colorado Constitution*, who is twenty-one years of age or older that is cultivating marijuana plants for their own use, may only do so within their primary residence or associated accessory structure.
2. Possession, growing and processing of such marijuana plants must not be perceptible from the exterior of the primary residence or accessory structure, including, but not limited to:
 - a. common visual observation, including any form of signage;
 - b. unusual odors, smell, fragrances, or other olfactory stimulus; or
 - c. light pollution, glare, or brightness that disturbs the repose of another.
3. Marijuana plants shall not be grown or processed in the common areas of a multi-family or attached residential development.
4. The use of compressed gases including, but not limited to butane, propane, and hexane, in the cultivation, production, growing and possessing of marijuana plants shall be prohibited.
5. Cultivation, production, growing and possessing of marijuana plants shall be limited to the following space limitations:
 - a. Within a single family dwelling unit, which is defined as Group R-3 in the *International Building Code*, the aggregate area used for the production, and growing of marijuana plants shall be confined to a contiguous 75 square foot secure area.
 - b. Within a multi-family dwelling unit, which is defined as Group R-2 in the *International Building Code*, the aggregate area used for the production, and growing of marijuana plants shall be confined to a contiguous 35 square foot secure area.
6. Notwithstanding the standards established herein, the possession, growing and processing of marijuana shall comply with all adopted City building and life-safety codes and regulations as the same may be amended from time to time.
7. The Community Development Director shall have the authority to inspect any primary residence or associated accessory structures used for the possession, growing and processing of marijuana plants, following the provisions of Section 15.20.010 (Authority to inspect) of the *LDC*.

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Section 7. Section 15.20.040, Penalty. Is hereby amended by the change to sub-section (A) which shall read as follows:

(A) **Misdemeanor.** Penalties for violation of any portion of the *Land Development Code* shall be as provided in Chapter 4.20, Section 4.20.010 of the *Gunnison Municipal Code*.

Section 8. Severability. Should any section, clause, phrase, or provision of this ordinance be ruled invalid or unenforceable by any court of competent jurisdiction, it is hereby declared the intent of the City Council of the City of Gunnison that the remaining provisions of this ordinance shall be given full force and effect if it is possible to do so.


INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 24th day of September, 2013, on first reading, and introduced, read, and adopted on second and final reading this 8th day of October, 2013.



ATTEST:



Mayor



City Clerk

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