

ORDINANCE NO. 2018-002

AN ORDINANCE OF THE

BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO

REPEALING AND REPLACING ORDINANCE NO. 2017-001, AND PROVIDING FOR LICENSING AND PERMITTING OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, RETAIL MARIJUANA STORES, MARIJUANA TESTING FACILITIES, AND MARIJUANA RESEARCH AND DEVELOPMENT FACILITIES

WHEREAS, the Board of County Commissioners has previously adopted and repealed Ordinances 2014-003 ("2014 Ordinance"), 2015-004 ("2015 Ordinance"), and 2016-001 ("2016 Ordinance"), and now desires to repeal and replace Ordinance 2017-001 ("2017 Ordinance") with this ordinance. These Ordinances provide for licensing and permitting of marijuana cultivation facilities, marijuana product manufacturing facilities and retail marijuana stores; and prohibit operation of marijuana testing facilities, except for certain facilities in operation prior to May 11, 2011; and

WHEREAS, in 2015 the voters of Ouray County approved an excise tax of 5% on the average market rate, as determined by the Colorado Department of Revenue, on the first sale or transfer of unprocessed retail marijuana by a retail marijuana facility located within Ouray County; and

WHEREAS, the Board of County Commissioners has power under C.R.S. 12-43.4-306, among other authorities, to conduct such background investigations of applicants and consider such matters as state law permits in reviewing applications for licenses for retail marijuana establishments and facilities to ensure the public health, safety and welfare; and

WHEREAS, the Board of County Commissioners is authorized to adopt and enforce regulations for retail marijuana establishments pursuant to C.R.S. 12-43.4-309, as amended, and finds that additional amendments to the Ordinances governing retail marijuana in Ouray County are necessary to fully and effectively implement a marijuana licensing program; and

WHEREAS, the Board of County Commissioners finds that some County licensed Retail Marijuana Establishments, pursuant to C.R.S. 12-43.4-103(17), as amended, are unable to plant, cultivate and harvest retail marijuana for sale during the license period and this lack of marketable marijuana crop by authorized retail marijuana coupled with the limited number of licenses, contributes to license and real property speculation and increased unauthorized sales channels for grey and black marijuana markets; and

WHEREAS, the Board of County Commissioners adopts this ordinance, permitting cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, medical marijuana facilities and retail marijuana stores, adding permitting for marijuana research and development facilities, additional license requirements for all Licensees, and establishing requirements for Retail Marijuana Establishments to be active, operational and produce a marketable crop during the license period.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO:

Section 1. Authority.

This Ordinance is authorized pursuant to, inter alia, Article XVIII, Section 16, of the Colorado Constitution, the Colorado Retail Marijuana Code, C.R.S. 12-43.4-101, *et seq.* and the Colorado Medical Marijuana Code, C.R.S. 12-43.3-101 *et seq.*, which authorize the licensing and regulation of medical and retail marijuana business and affords local government the option to determine whether or not to allow medical and retail marijuana businesses within their respective jurisdictions and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in state law, Article 11 of Title 30, C.R.S. (county powers and functions), Article 15 of Title 30 (County police powers), and Article 28 of Title 30 (county planning and building regulations).

Section 2. Purpose.

The Board of County Commissioners of Ouray County, Colorado finds and declares that this Ordinance shall provide the basis for licensing of marijuana establishments in Ouray County, consistent with Article XVIII of the Colorado Constitution, state laws and regulations.

Section 3. Amendment and Repeal of Ordinance 2017-001

Ordinance 2017-001 is repealed and the provisions of this Ordinance shall govern the licensing and

operation of all medical marijuana facilities, marijuana cultivation facilities, marijuana product manufacturing facilities, retail marijuana stores, and marijuana testing facilities.

Section 4. Colorado Retail Marijuana Code, Colorado Medical Marijuana Code, Compliance.

The definitions contained in the Colorado Retail Marijuana Code, C.R.S. 12-43.4-101, *et seq.*, as amended, and the Colorado Medical Marijuana Code, C.R.S. 12-43.3-101, *et seq.*, as amended, are incorporated herein by reference as though fully set forth. Further, all operation of marijuana cultivation, retail and production in Ouray County shall be in compliance with the Colorado Retail Marijuana Code, and the Colorado Medical Marijuana Code, as applicable, and the applicable Regulations adopted by the Colorado Department of Revenue, as those regulations may be amended from time to time. No marijuana facility shall be operated in Ouray County except as permitted and licensed by the State of Colorado, pursuant to state law, and in full compliance with terms and conditions imposed by the State of Colorado. Any marijuana facility that is in non-compliance with any provision of a state permit or license, law or regulations, shall be deemed in violation with this Ordinance. All commercial marijuana uses in Ouray County are licensed and regulated under this Ordinance. Additionally, marijuana businesses are separately licensed and regulated by the State of Colorado - Marijuana Enforcement Division. Therefore, marijuana businesses are not considered a *commercial use* as defined by the Ouray County Land Use Code and do not require separate approval or issuance of a Special Use Permit.

Section 5. License Required for Operation of Marijuana Facilities.

The County hereby authorizes the operation of medical marijuana facilities, marijuana cultivation facilities, marijuana retail facilities and marijuana products manufacturing facilities as set forth in this Ordinance. It shall be unlawful for any person to establish or operate a marijuana facility in the County without having first obtained a license for such facility from the local licensing authority. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Ordinance.

Section 6. Licensing Authority.

The Board of County Commissioners shall act as the Local Licensing Authority for review and approval of all licenses for marijuana facilities. The Land Use staff (herein referred to as staff) shall act as support staff to the Licensing Authority and shall accept and process all applications for marijuana facilities, and shall collect fees, draft and maintain such applications, forms, and administrative materials as may be required for operation of this Ordinance. The staff is delegated responsibility to take ministerial actions involving reporting or confirming local approvals of changes in business names, agents, addresses and similar non-policy matters to state regulators.

Section 7. Requirements for All Licensees for Marijuana Facilities and Establishments.

- (A) No marijuana license shall be issued for any marijuana facility or establishment located within 1,000 feet of an elementary or secondary school (PK or K-12) or licensed day care/child care facility, unless such school or licensed day care/child care facility was permitted subsequent to the date of issuance of the initial marijuana license at a location, regardless of ownership changes or other revisions to a marijuana license at the same location.
- (B) Upon issuance of a license, the County shall provide the licensee with one (1) original of such license for each establishment or facility to be operated by the licensee in the County. This original license shall be displayed in a location visible to the public or to enforcement officials.
- (C) Applicants for any marijuana business licenses must provide the following as part of the required application submittal materials:
 - 1. Evidence the anticipated traffic and parking requirements generated by the facility have been mitigated or do not unduly impact the surrounding property or roads.
 - 2. Evidence the facility will not disrupt the character and use of surrounding properties.
 - 3. Evidence the facility will not create additional impacts that effect public health, safety, or welfare.
 - 4. Evidence the facility is an appropriate use to be located on unincorporated property and does not unduly impact the available infrastructure.
 - 5. Evidence the facility will not create undue danger in surrounding areas, will not cause water

pollution, and will not create unreasonable amounts of offensive noise, dust, odors, glare, or other objectionable influences beyond the boundaries of the subject property.

6. Evidence the facility will comply with the applicable provisions of Section 9 of this Code, Visual Impact Regulations.
7. Evidence the facility has legal access, potable water, sewage disposal, and any other required utilities. Applicant shall provide proof of service from the utility provider (a "will serve" letter may constitute such evidence).
8. Evidence the facility will not unreasonably impact wildlife or significant wildlife habitat.
9. Evidence the facility will not alter, restrict, or inhibit, or interfere historic irrigation practices, head gates, ditches, and ditch rights-of-way.
10. Evidence the facility is not located within areas subject to identified geo-hazards, including but not limited to rockfall areas, avalanches, landslide, potentially unstable slopes, slopes greater than 30-percent, alluvial fans, colluvial slopes, talus slopes, shale faults, or ground subsidence.
11. Evidence the facility is not located on a property containing known chemical or other contamination.
12. Evidence the facility is compatible with the community character and surrounding land uses within the area for which the use is being proposed.
13. Evidence the facility has submitted documentation addressing any possible impacts on existing infrastructure, beyond what would be created by a use-by-right.
14. Evidence the facility, if required, has submitted a weed mitigation and/or revegetation plan.
15. Evidence the facility is in general conformance with the Ouray County Master Plan and can be constructed and operated in a manner that is compatible with adjacent property uses.

Section 8. Requirements for New Applications.

- (A) A person seeking a new license pursuant to this Ordinance shall submit an application to the Local Licensing Authority on forms provided by the Staff. Each applicant shall pay a non-refundable Operation Fee pursuant to Section 21.
- (B) A copy of the completed application form(s) provided to the State of Colorado for licensing under state law and regulations is required to be submitted along with the application to the County. A copy of *all additional supporting documentation* provided to the State/MED with its application shall be submitted to Staff only upon request. Prior to issuance of the County license, the applicant shall provide a copy of the license or other approval from the State of Colorado to operate in the State of Colorado. The information provided with the application shall include, but is not limited to:
 1. Complete application and application fee as set forth in the appropriate fee schedule;
 2. the name, address, and date of birth of the applicant or of each of the partners, officers, directors, or managers if the applicant is a corporation, limited liability company, partnership or other business entity;
 3. a copy of the driver's license of each applicant or partner, officer, director or manager if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity, or such other evidence of lawful presence and place of residency, if applicable, and good character and reputation as the Local Licensing Authority may request;
 4. a complete set of fingerprints of the applicant or of each of the partners, officers, directors or managers, if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity;
 5. such other information as the Local Licensing Authority or the Staff on its behalf may require in order to determine whether a local license should be granted;
 6. financial information regarding loans and investors necessary to determine whether all persons with a financial interest in the retail marijuana establishment have been included as owners pursuant to Colorado statute and regulations.

- (C) An applicant who has previously submitted fingerprints for local licensing purposes may request that the fingerprints on file be used.
- (D) The local licensing authority shall direct the Ouray County Sheriff to conduct a criminal history background check pursuant to C.R.S. 12-43.4-307 to determine whether the applicant, or the partners, officers, directors, or managers if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity are qualified to hold a local license based upon the criteria and prohibitions set forth in C.R.S. 12-43.4-306.
- (E) Each application must be verified by the oath or affirmation of the applicant, or the person submitting the application on behalf of the applicant if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity.
- (F) Any misrepresentation, omission, or falsehood of material information provided and verified in the application may be grounds for immediate denial of the application or revocation of a license. Material information includes, but is not necessarily limited to: the applicant, names of partners, officers, directors or managers; residency of the applicant or any partner, officer, director, or manager if the applicant is a corporation, limited liability company, partnership, joint venture, or other business entity; information regarding land ownership of a marijuana cultivation facility; omission of existing agreements or contracts for change in ownership of the entity, or ownership of the land on which a marijuana cultivation facility is proposed; financial interests or financing; criminal history.
- (G) Applicants are strongly urged to schedule a pre-application meeting with staff to determine what additional documents will be required prior to processing. For construction of new buildings or structures, it may be necessary to submit elevation drawings, drawings or depictions of proposed fencing, proposed blending, architectural, and landscaping plans to limit visual impacts,
- (H) Public notices, notices to adjacent and neighboring property owners, on-site posting are required for all new applications. Written notice must be sent to adjacent property owners, and property owners within a one (1) mile radius of the property line of the proposed facility. The procedures for notices shall be as provided in applicable provisions of the Land Use Code and will be provided to applicants by the staff upon request, or upon receipt of a complete application.

Section 9. Requirements for Renewal of Licenses

- (A) Every Licensee shall submit a renewal application as set forth in Section 19 on forms provided by the Staff and pay a non-refundable Operation Fee pursuant to Section 21.
- (B) Every renewal application, shall contain (1) a narrative explaining whether the operation is an Active Marijuana Facility or an Inactive Marijuana Facility pursuant to Section 19, (2) a summary of the operation during the previous license period, (3) any approved changes or modifications made during the previous license period, (4) any plans for the business during the next license period, including any planned modification or expansion, and (5) any documentation explaining any complaints or violations during the previous license period.
- (D) Such other information as the Local Licensing Authority or Land Use staff may require in order to determine if a renewal license should be granted.

Section 10. General Regulations Pertaining to all Cultivation Facilities

- (A) Licensed marijuana cultivation facilities and premises may propagate, cultivate, harvest, prepare, cure, package, and label marijuana, whether in concentrated form or otherwise, and sell marijuana that they have cultivated to a person licensed by the State of Colorado to operate a medical marijuana facility or retail marijuana store, production facility, testing facility, or other cultivation facility. Licensed marijuana cultivation facilities are prohibited from selling marijuana directly to any consumer. Licensed marijuana research and development cultivation licensees (ie. state cultivation license) may grow, cultivate, possess, and transfer for research purposes only.
- (B) Marijuana cultivation facilities may only be located on a legal, conforming lot in unincorporated Ouray County where farming and ranching is a use by right pursuant to the Ouray County Land Use Code; however, no cultivation may occur without a license under this Ordinance. Except as provided for in Section 11, all cultivation activities shall occur, inside of a building, greenhouse, or other enclosed structure, and shall be subject to all security requirements imposed by this Ordinance and by state law and regulations. Applicants must demonstrate that the proposed

location of the cultivation facilities on the lot will minimize off-site impacts of the facility: 1) to adjacent residents or properties; 2) on traffic congestion on local streets and roads; 3) of odor, light, and noise; 4) visually.

- (C) Applicants shall provide information and such documentation as staff may reasonably require demonstrating the availability of an adequate water supply for both irrigation and domestic uses during the term of the license and shall confirm such information and demonstrate continued availability of an adequate water supply as part of any renewal application. Hauled water may not be used as a source of water and shall not be considered an adequate water supply except as an emergency, temporary supply.
- (D) There shall be no more than ten (10) marijuana cultivation facilities licensed in Ouray County, including application renewals and new applications. The Local Licensing Authority may, by a future resolution to be attached to this ordinance, increase or decrease the number of cultivation facilities allowed. All applications shall be processed in order of receipt. In the event that an application for a new license or for renewal of an existing license is denied by the Local Licensing Authority, staff will process the next application in priority of time. Staff may refuse to accept Applications that are deemed incomplete or may permit an Applicant a reasonable amount of time to complete or amend an application, not to exceed sixty (60) days. Any application that is materially or substantially amended, including changes in the name of the applicant, the proposed location of the facility, or any combination of amendments, may be considered incomplete and, when amended will be placed at the end of the priorities in time. Additional applications may be filed with the staff, but there shall be no more than a total of ten (10) cultivation facilities licensed in Ouray County at any time. If a cultivation facility fails to timely renew its application pursuant to Section 13, or is denied a renewed license, or has otherwise ceased to operate with a license in Ouray County, then staff may process the next new application in priority of time. No more than two (2) "contingent" applications will be accepted by the Staff.
- (E) Marijuana cultivation facilities shall be subject to all provisions of the Ouray County Land Use Code and such provisions of the building codes as may be applicable, including the requirement for an approved building permit for any new structure or modifications to an existing structure related to the marijuana business. Proposed structures related to a marijuana business do not qualify for agricultural exemptions to building permit requirements.
- (F) Operators of marijuana cultivation facilities shall use best practices to conserve energy and water in cultivation operations and shall avoid the use of treated water from a domestic water provider for irrigation purposes.
- (G) Marijuana cultivation facilities are considered agricultural in nature, and as such Section 9 of the Ouray County Land Use Code does not apply. Cultivation facilities shall, however, reduce visual impacts through blending, architectural design, landscaping, site placement, building materials, and other measures, as determined by the Local Licensing Authority, to limit the visibility and reflectivity of any building or structure, including greenhouses, from adjacent properties or roads, or other roads or properties from which the facility may be visible.
- (H) Cultivation facilities, including all structures, greenhouses, any approved outdoor cultivation areas, designated parking areas, storage buildings, and any screened outdoor storage, may not cover more than 10% of the lot or parcel.
- (I) All licensed retail marijuana cultivation facilities shall pay to the County a 5% excise tax on the first sale or transfer of unprocessed retail marijuana from a retail marijuana cultivation facility located within Ouray County, including bud, trim and wet whole plant, and the first sale of seeds and immature plants, or other cultivation products assessed by the Colorado Department of Revenue, from a retail marijuana cultivation facility to a retail marijuana store or retail marijuana products manufacturing facility. The amount of the excise tax shall be calculated using the procedures adopted by the State of Colorado Department of Revenue, as amended from time to time, for collection of the state excise tax: using the average market rate for the various products of cultivation as determined by the Colorado Department of Revenue. Remittance of the 5% Ouray County Marijuana Excise Tax shall be paid to Ouray County not later than the 20th day of the month following the month in which sale or transfer of unprocessed retail marijuana occurred.

For example, the excise tax for sales or transfers of unprocessed marijuana occurring during the month of January are due not later than February 20. If the 20th falls on a weekend or

holiday, the due day is the following business day.

- (J) A copy of the excise tax return filed with the Colorado Department of Revenue must accompany the County excise tax payment, along with the 5% Marijuana Excise Tax Reporting Form and payment to Ouray County. The reporting Form and excise tax payment should be made payable to Ouray County and delivered to the Ouray County Administrator, 541 4th Street, Ouray, Colorado 81427, or mailed to P.O. Box C, Ouray, Colorado 81427. A reporting form must be submitted each month by every licensed retail marijuana facility, even if no sales or transfer occurred during the month or no excise tax is due for the period. Late payments shall be assessed a penalty of \$100 per day for each day the payment is made after the due date, unless specifically excused by the County Administrator in writing for good cause shown. Payments should be made by check or cashier's check if possible. In addition to the late fee, failure to pay the excise tax due on or before the 20th of the month is grounds for immediate suspension or revocation of the County license for the cultivation facility.

Section 11. Indoor Cultivation Regulations

- (A) *Hoop houses* and similar seasonal greenhouse structures may be left up year-round at the discretion of the County Building Inspector, based upon a review of the structures design and engineering.
- (B) Internal grow-lighting used during night-time hours (from sunset to sunrise) shall not be visible from the exterior of the building. Exterior lighting shall be consistent with the Ouray County Land Use Code.

Section 12. Outdoor Cultivation Regulations

- (A) Outdoor cultivation may be permitted by the Local Licensing Authority, at its sole discretion, as part of a cultivation license. In 2017 and 2018 such approvals may be granted on a conditional basis as part of a pilot program to determine whether and under what circumstances, outdoor cultivation may be accomplished without causing a nuisance as to odor, security, or noise. Outdoor cultivation may be approved if the Local Licensing Authority determines that outdoor cultivation at the proposed location will not cause a nuisance based on the proximity of the proposed operation to adjacent occupied structures, given proposed controls and mitigation of odor, prevailing wind direction, the current operational status of the applicants indoor cultivation facility, visibility of the facility, adequate security measures, and such other factors as may be appropriate to the site-specific analysis.
- (B) In order to apply for outdoor cultivation, the applicant must also hold an active license for indoor cultivation from Ouray County, and the indoor cultivation facility must be producing and operational, and not the subject of any state or local enforcement action, either on-going or during the previous two (2) years.
- (C) If approved, the outdoor cultivation must occur on the same parcel that is licensed for indoor grow.
- (D) The maximum size of a county-approved outdoor cultivation facility is limited to the size of the current/existing indoor cultivation facility footprint (i.e. *1 to 1 ratio*) or as may be further limited by the Local Licensing Authority.
- (E) All outdoor cultivation facilities shall comply with the zoning setbacks for structures, as stated in the Ouray County Land Use Code.
- (F) No artificial grow lighting shall be permitted for outdoor cultivation operations. Security lighting as required by the State of Colorado is allowed but must comply with the Ouray County Land Use Code. Applicants must provide proof of application for waiver from State/MED regarding the lighting required on outdoor cultivation facilities.
- (G) If the outdoor cultivation is visible to the public or neighbors beyond the property boundary where the marijuana cultivation facility is located, all outdoor cultivation (crops) must be reasonably screened from view. Screening methods may include fencing, berm, vegetation, or a combination of such elements, but all screening elements must blend with surrounding land and vegetation.
- (H) All outdoor cultivation facilities must provide a security fence around the facility. Such fencing must also comply with State Regulations.

- (I) Approval of Outdoor Cultivation may be granted for an initial period of more or less than 12 months, depending on the renewal and expiration date of the existing cultivation license.
- (J) If Outdoor Cultivation is permitted, the renewal or expiration dates for Indoor and Outdoor Cultivation shall be aligned in order to create efficiency in the permitting process of one license for the facility.
- (K) If a Cultivation License is suspended or revoked for violation of terms and conditions of the license applicable to indoor cultivation, the Local Licensing Authority *may* also revoke the approval of the associated Outdoor Cultivation. If for any reason, the Local Licensing Authority revokes, or fails to renew, approval for Outdoor Cultivation, the Local Licensing Authority may continue without revocation and/or renew, approval of the Indoor Cultivation.
- (L) If there are substantiated complaints of an outdoor cultivation operation violating the terms and conditions of the license, including substantiated complaints related to odor, the Local Licensing Authority may revoke permission for Outdoor Cultivation at any time.
- (M) Applicants requesting to add Outdoor Cultivation to their existing cultivation license must submit a completed application and fee for a Major Modification of Premises together with:
 1. A scaled site plan containing existing structures, boundaries of the existing licensed marijuana facility (if any), proposed outdoor cultivation areas, fence locations, proposed security lighting, and prevailing wind direction, and any proposed mitigation for odors or screening to limit visibility beyond the property boundary.
 2. A detailed security fencing plan that specifies the type, color, gate locations and height of any proposed fencing.
 3. Any submittal requirements listed under Sections 8, 9, and 10 above, as may be deemed applicable by the Land Use Staff.

Section 13. Retail or Medical Marijuana Stores and Licensed Premises.

- (A) County-licensed retail or medical marijuana stores and facilities may be located within the Colona Zone, or pursuant to an approved PUD. Certain provisions of the Land Use Code may apply as deemed appropriate by Staff and the Local Licensing Authority.
- (B) Signage and advertising shall be permitted as provided in the Land Use Code and pursuant to state law and regulations, but in the event of a conflict between state law and the Land Use Code, the more stringent requirement shall apply.
- (C) In any retail marijuana store in which edibles are sold to consumers, a sign shall be prominently and conspicuously displayed to inform consumers that the edible products have not been inspected by, or on behalf of, the county public health agency.
- (D) Any edibles sold in a retail marijuana store shall be sold in "child-resistant" packaging, as defined by state regulations, and labeled as follows: "This product is not for consumption by anyone under the age of 21." Any more stringent state regulations for packaging or labeling of edibles shall be applicable in addition, or if in conflict, shall supersede this provision.
- (E) There shall be posted in a conspicuous location in each retail marijuana store a legible sign with the following warning:

"The use of marijuana or marijuana products may impair a person's ability to drive a motor vehicle or operate machinery, it is illegal under state law to drive a motor vehicle or operate machinery when under the influence of, or impaired by, marijuana.

"Possession and distribution of marijuana is a violation of federal law.

"No one under the age of twenty-one (21) years is permitted on the premises."

Section 14. Retail Marijuana Products Manufacturing Facility.

- (A) County-licensed retail marijuana products manufacturing facilities, including production of edibles, may be located within the Colona Zone, pursuant to an approved PUD, or as a use accessory to an existing *licensed* and *producing* marijuana cultivation facility. Certain provisions of the Land Use Code may apply as deemed appropriate by Staff and the Local Licensing Authority.
- (B) Licensed marijuana products manufacturers may manufacture, prepare, package and label retail

marijuana products, whether in concentrated form or that are comprised of marijuana and other ingredients intended for use or consumption. Licensed retail marijuana products manufacturers may sell retail marijuana products of its own manufacture to persons holding a retail marijuana store license from the State of Colorado, or to other licensed retail marijuana products manufacturers. Licensed retail marijuana products manufacturers are prohibited from selling retail marijuana or retail marijuana products directly to any consumer. With the exception of ethanol, no compressed, flammable gas may be used in any production methodology, including use as a solvent in the extraction of THC or other cannabinoids.

- (D) Licensed marijuana products manufacturers are prohibited from manufacturing, preparing, packaging or labeling marijuana products in a location that is operated as a retail food establishment or as a wholesale food facility.
- (E) All packaging shall include a notice that the contents have not been inspected by the county public health agency.
- (F) The number of employees allowed for marijuana products manufacturing facility shall be limited to five (5) or as may be established by the Local Licensing Authority upon consideration of the site location, uses of neighboring properties, and impact of traffic on roads and neighbors.
- (G) The total area used for any marijuana products manufacturing facilities shall not exceed three percent (3%) of the lot, parcel, or tract of land or not more than 6,000 square feet, whichever is less. If the operation includes a marijuana products manufacturing facility and a marijuana cultivation facility on the same lot or parcel, then all structures related to the marijuana facility, all cultivation area(s), and all outside storage, may not cover more than ten percent (10%) of the total square footage of the lot or parcel.
- (H) No on-site sign or advertising, other than Ouray County approved address signage is allowed.
- (I) Outside storage of supplies, equipment, machinery, or similar items is allowed up to a maximum of 500 square feet and must be screened from neighboring properties, County Roads, or public rights-of-way. Permitted outside storage is included with, and not in addition to, the overall lot coverage limitations stated within this ordinance.
- (J) There shall be no offensive noise, smoke, dust, odors, heat, or glare noticeable beyond the boundary of the lot, parcel or trace of land due to the conduct of the marijuana products manufacturing facility.
- (K) If the marijuana products manufacturing facility generates more than fourteen (14) vehicle trips per day on average, a mitigation plan shall be submitted to the satisfaction of the County.

Section 15. Marijuana Products Testing Facility.

- (A) Licensed marijuana products testing facilities may be located within unincorporated Ouray County in the Colona Zone, or as a use accessory to an existing *licensed* and producing marijuana cultivation facility.
- (B) The number of employees for marijuana products testing facilities shall be limited to five (5) or as may be established by the Local Licensing Authority, upon consideration of the site location, uses of neighboring properties, and impact of traffic on roads and neighbors.
- (C) The total area used for any marijuana products testing shall not exceed three percent (3%) of the lot, parcel, or tract of land or not more than 6,000 square feet, whichever is less. If the operation includes a marijuana product testing facility and a marijuana cultivation facility on the same lot or parcel, then all structures related to the marijuana facility, all cultivation area(s), and all outside storage, may not cover more than ten percent (10%) of the total square footage of the lot or parcel.
- (D) No on-site sign or advertising, other than Ouray County approved address signage is allowed.
- (E) Outside storage of supplies, equipment, machinery, or similar items is allowed up to a maximum of 500 square feet and must be screened from neighboring properties, County Roads, or public rights-of-way. Permitted outside storage is included with, and not in addition to, the overall lot coverage limitations stated within this ordinance.
- (F) There shall be no offensive noise, smoke, dust, odors, heat, or glare noticeable beyond the boundary of the lot, parcel or trace of land due to the conduct of the marijuana products testing

facility.

- (G) If the marijuana products testing facility generates more than fourteen (14) vehicle trips per day on average, a mitigation plan shall be submitted to the satisfaction of the County.
- (H) Applicants for a marijuana product testing facility license must provide the following as part of the required application submittal materials:

Section 16. Marijuana Research and Development License

- (A) Licensed marijuana research and development facilities may be located within unincorporated Ouray County in the Colona Zone, or as a use accessory to an existing *licensed* and producing marijuana cultivation facility.
- (B) The number of employees for marijuana research and development facilities shall be limited to five (5) or as may be established by the Local Licensing Authority, upon consideration of the site location, uses of neighboring properties, and impact of traffic on roads and neighbors.
- (C) The total area used for any marijuana research and development shall not exceed three percent (3%) of the lot, parcel, or tract of land or not more than 6,000 square feet, whichever is less. If the operation includes a marijuana product testing facility and a marijuana cultivation facility on the same lot or parcel, then all structures related to the marijuana facility, all cultivation area(s), and all outside storage, may not cover more than ten percent (10%) of the total square footage of the lot or parcel.
- (D) No on-site sign or advertising, other than Ouray County approved address signage is allowed.
- (E) Outside storage of supplies, equipment, machinery, or similar items is allowed up to a maximum of 500 square feet and must be screened from neighboring properties, County Roads, or public rights-of-way. Permitted outside storage is included with, and not in addition to, the overall lot coverage limitations stated within this ordinance.
- (F) There shall be no offensive noise, smoke, dust, odors, heat, or glare noticeable beyond the boundary of the lot, parcel or tract of land due to the conduct of the marijuana products testing facility.
- (G) If the marijuana products testing facility generates more than fourteen (14) vehicle trips per day on average, a mitigation plan shall be submitted to the satisfaction of the County.
- (H) Any changes during the period of an issued Marijuana Research and Development Facility License to business operation (ex. ownership, traffic, hours, etc.) from how the operation was depicted in the application shall require notification to the County and potential review of the license by the Local Licensing Authority.

Section 17. Dual Licenses.

Any person or entity or entities with common ownership licensed by the State of Colorado for multiple licenses to engage in multiple operations or for multiple facilities may apply for such dual operation, including both medical and retail marijuana, in Ouray County to the extent that such operations are otherwise permitted by this Ordinance.

Section 18. Continuing Compliance Documentation.

Any person licensed for any marijuana facility in Ouray County shall demonstrate continued compliance with all state licenses, laws and regulations. Licensees shall provide Ouray County with copies of all documents updating information, agents, employees, operations, violations, enforcement actions, or other administrative matters sent to or received from the State of Colorado licensing and enforcement agencies. Failure to provide any documents sent to or received from the State of Colorado licensing and enforcement agencies may be grounds for denial of a renewal permit or revocation of a permit.

Section 19. Duration, Renewal, Revocation, Transfer, and Modification of Licenses

- (A) Each license shall be valid for one (1) year from the date of issuance. A renewal application shall be filed at least sixty (60) days, but not more than ninety (90) days, prior to expiration. Renewal applications may be submitted more than ninety (90) days prior to expiration, only if submitted with an additional request. (ex. *Change in Entity Structure, Minor/Major Modification of Premises, Change in Trade Name, etc.*) The timely filing of a renewal application shall extend the

current license period until a final decision is made. An untimely application filed before the expiration date will be expedited and may be accepted only upon the payment of a Late Application Fee; such application shall serve to extend the license period until a final decision is made.

- (B) Notwithstanding any state law to the contrary, a licensee whose license expired and for which no application for renewal was received prior to the expiration date, shall be deemed to have forfeited its license under this Ordinance. The County shall not accept a renewal application after the expiration of the license. A licensee whose license expired shall not cultivate, harvest, process, manufacture, produce, or sell retail marijuana or retail marijuana products until a new license has been obtained.
- (C) Renewal licenses may be administratively issued by the staff for a period of one year if staff finds that the facility for which the license was granted is:
 - (1) an Active Marijuana Facility.
 - (2) there have been no continuing violations of state law or this Ordinance.
 - (3) there are no substantial revisions, amendments or alterations to the existing facility or any term of a lease, water supply, or other local license term or condition.
- (D) Any renewal application that contains significant or substantial changes, revisions, alterations, or expansion of size of the facility shall be required to complete an updated application form.
- (E) At the sole discretion of the Local Licensing Authority and upon good cause shown, a renewal license may be issued for a period in excess of one year.
- (F) Active Marijuana Facility is one that has planted, cultivated and harvested at least one marijuana crop, in a quantity equal to or greater than fifty-percent (50%) of the maximum number of plants allowed under the license, at least once during the prior licensing period.
- (G) An Inactive Marijuana Facility is one that is NOT an Active Marijuana Facility during the prior licensing period.
- (H) Every licensed facility shall be an Active Marijuana Facility upon renewal or transfer of a license. A Licensee whose facility is not an Active Marijuana Facility **may be granted** a one-year grace period to meet the Active Marijuana Facility requirement by the Local Licensing Authority, for good cause shown and upon the payment of an Application Fee and an Inactive Marijuana Operation Fee to defray the additional costs of processing a license for an Inactive Marijuana Facility.
- (I) At the sole discretion of the Local Licensing Authority and only under extraordinary circumstances, a Licensee seeking a renewal of a license that does NOT meet the Active Marijuana Facility requirement and has already received a one-year grace period in the previous license period, may be renewed upon the payment of an Operation Fee and an Inactive Marijuana Facility Fee collected for the purpose of defray the additional costs of processing a license for an Inactive Marijuana Facility.
- (J) Extraordinary circumstances for purposes of applying for renewal after receiving a one-year grace period shall be that Licensee exercised due diligence in developing the licensed facility, including, but not limited to, financing, construction plans, and application for other necessary permits, and Licensee provided clear and convincing evidence sufficient to overcome the burden to the County in not having a marketable retail marijuana crop offered for sale by Licensee in the coming license period, the impact on other potential applicants who may have a greater ability to produce a marketable crop within a license period, and any other factors the Local Governing Body deems proper.
- (K) Modifications of a license during the term of the license may be made by submitting an application identifying the modifications requested. Minor modifications of premises approved by the State including internal premises changes or other minor modifications not increasing the overall size of the facility shall be reviewed by Staff. Major modifications shall be approved or denied in the discretion of the Local Licensing Authority. Major modifications include those substantial alterations to the facility, ownership, or other terms and conditions, as provided under state law and regulations. Major modifications also include any change in the lease or the ownership of real property on which a facility is located. Any proposed modification that includes

expansion of a greenhouse or other related facilities by more than 10% of the licensed square footage, shall require on-site posting and notice to adjacent property owners.

- (L) Any change in ownership, including restructuring of an existing business entity to include additional members, partners, shareholders or any financial arrangement that includes a financial interest in the entity, including a share of profits, future ownership rights or promise of future ownership rights, requires approval of the Local Licensing Authority. The application shall include documentation that a transfer of ownership application has been submitted to the State and is in process, or, documentation showing that the State has approved or conditionally approved, the transfer of the corresponding state license or permit to the proposed transferee. The application shall include the information provided for a new license, as provided in Section 8 above, including a complete set of fingerprints for all persons, partners, members, officers, and managers. The application shall also contain proof concerning whether the facility is an Active Marijuana Facility. The Local Licensing Authority may request such additional investigation or information as it deems necessary to make an informed decision and may approve or deny the application for transfer in its discretion, and upon such terms and conditions as may be approved by the Local Licensing Authority and agreed to by the proposed transferee.
- (M) Notwithstanding state requirements for individual licenses for multiple activities at one location, Ouray County will license each facility for the activity or activities conducted. For example, if the State of Colorado requires a separate license for each section of plants grown within the same cultivation facility or greenhouse, as each section is used for a licensed medical or retail operation, one license would be required from Ouray County for the cultivation or greenhouse facility, even if some plants grown in the facility are used for medical dispensary purposes and some plants are used for retail operations. A Licensee shall provide the County with copies of all licenses received from the state.
- (N) Applications for a Change in Trade Name may be administratively reviewed and approved by staff or may be referred to the Local Licensing Authority for further review and determination.

Section 20. Authority to Impose Conditions on License, or to Deny License.

The Local Licensing Authority shall have the authority to impose such reasonable terms and conditions on a license, or to deny a license or renewal of a license, or a modification of a license, as may be necessary to protect the public health, safety and welfare of the people of Ouray County, and to obtain compliance with the requirements of this Ordinance and applicable law. All approvals by the Local Licensing Authority shall include a consideration of whether the proposed activity or facility is in general conformance with the Master Plan and shall include consideration of whether the proposed activity or facility can be conducted or constructed and operated in a manner that is compatible with the adjacent land uses. The Local Licensing Authority may, in its sole discretion, deny a license, renewal of a license, or modification of a license pursuant to this Ordinance. The Local Licensing Authority may deny a renewal of a license if information is presented demonstrating that material information in the application for the initial license was untruthful, misleading, contained material omissions, misstatements or was otherwise intentionally or purposefully calculated to mislead the Local Licensing Authority about any material information, including ownership of the facility, owners, directors, managers, or holders of financial interest in the applicant. The Local Licensing Authority shall deny a license, renewal of a license, or modification of a license to any person prohibited by state law, as provided in C.R.S. 12-43.4-307

Section 21. Operation Fees.

Upon the issuance of any license, the licensee shall pay to the County an Operation Fee, also called an Application Fee, as referred to in section 16(5)(f) of article XVIII of the state constitution, in an amount to be determined by the County by separate Resolution to be sufficient to cover the costs to process the application, and administration, inspection, and enforcement costs for the license period.

Section 22. Signage and Advertising

All signage and advertising for a retail marijuana facility shall be in compliance with state laws and regulations, as well as the Ouray County Land Use Code, and any applicable special use permit. Signs for marijuana cultivation facilities shall be limited to address only.

Section 23. Security.

All security measures shall be in compliance with state law and regulations, and shall include security

surveillance cameras, robbery and burglary alarms, a locking safe affixed to the premises, exterior lighting, and deadbolt locks on all exterior doors, and on-site security presence. The Ouray County Sheriff may inspect the premises at any time to ensure appropriate security measures are in use, and to ensure compliance with state laws and regulations. All exterior lighting shall comply with Ouray County Outdoor Lighting Regulations. Owners/managers of marijuana facilities are strongly encouraged to have a 24/7 on-site caretaker. However, other alternative security measures designed to ensure continual premises protection from intruders may be proposed.

Section 24. Visibility of Activities, Odor and Control of Emissions.

- (A) All activities of marijuana facilities, including without limitation, growing, processing, displaying, selling, storage and packaging, shall be conducted indoors, except for outdoor cultivation as provided for in Section 12. For purposes of this Ordinance, greenhouse or hoop house cultivation shall be deemed to occur indoors. The Board shall consider and provide for appropriate limitations and controls governing any outdoor cultivation license, provided for in Sections 10 and 12 of this Ordinance.
- (B) No devices, contrivances, instruments, and paraphernalia for inhaling or otherwise consuming marijuana shall be displayed or kept in a manner so as to be visible from outside the licensed premises.
- (C) No licensee shall operate in a manner that causes a nuisance. The Right to Farm Ordinance, Ordinance No. 2001-01 shall not be a defense to any allegation of operating as a nuisance. A licensee shall take appropriate measures and use best efforts to prevent smoke, odors, debris, fluids, and other substances from exiting a retail marijuana facility, and shall be responsible for immediate and full clean-up and correction of any condition creating a nuisance. In the instance of a complaint filed with the Land Use Department regarding objectionable odors from a marijuana facility, the burden shall be on the marijuana business license holder to prove the odor does not originate from the subject facility, or to mitigate any such odors. Marijuana facility license holders shall have ninety (90) days from the date of review of the complaint by the Local Licensing Authority to provide evidence that clearly demonstrates the odor does not originate from the subject facility, or, to present potential mitigation methods to the Local Licensing Authority. Failure to provide such evidence, or propose approved methods of mitigation, may result in suspension and/or possible revocation of the license. All licensees shall properly dispose of all materials, items, and other substances in a safe, sanitary and secure manner in accordance with applicable laws and regulations.

Section 25. Sales and Business Licenses Required.

At all times while a license is in effect, the licensee shall possess all required state and local sales tax and/or business licenses.

Section 26. Sales, Excise and Property Taxes.

Each licensee shall collect and remit all applicable sales and excise taxes, and shall remit applicable real and personal property taxes.

Section 27. Book and Records.

All books and records required to be maintained by the State of Colorado shall also be subject to inspection by the County during regular business hours.

Section 28. Nonrenewal, Suspension or Revocation of License.

The local licensing authority may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause, including suspension or revocation of the licensee's state license, or violation of this Ordinance. Good cause for the purpose of suspending, revoking, or refusing to renew a license under this Ordinance means: (1) the licensee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this Ordinance and any rule or regulation promulgated pursuant to this Ordinance, including failure of the licensee to provide the County with copies of documents filed with the State Marijuana Enforcement Division (MED) and correspondence with the MED; (2) the licensee has failed to comply with any special or license-specific terms or conditions that were imposed at the time the licensee was issued or that were imposed as a result of a disciplinary process or potential disciplinary process; (3) the licensee's retail marijuana store, retail marijuana products manufacturing operation, or retail marijuana cultivation facility has been operated

in a manner that is a nuisance or that otherwise affects the public health, welfare or safety of the immediate neighborhood in which the marijuana establishment is located. Evidence to support such a finding may include: (a) a continuing pattern of offenses against the public peace; (b) a continuing pattern of drug-related criminal conduct within the premises of the marijuana establishment; or (c) a continuing pattern of criminal conduct directly related to or arising from the operation of the retail marijuana establishment.

Section 29. Violations, Enforcement and Penalties.

- (A) In addition to the possible denial, revocation, suspension or non-renewal of a license under the provisions of this Ordinance, any person, including, but not limited to, any applicant, licensee, manager or employee of a retail marijuana facility, or any customer thereof, who makes a false statement on an application, or violated any provision of this Ordinance or of the Colorado laws and regulations governing the licensing and operation of a retail marijuana facility will be subject to one or more of the following penalties, depending on the determination by the Local Licensing Authority of the severity of the violation in the following categories:
- (B) License Violation Affecting Public Health and Safety. This category of violation is the more severe and may include, but is not limited to, sales of retail marijuana to persons under the age of 21; consuming marijuana on the licensed premises; retail marijuana sales in excess of the relevant transaction limit; permitting the diversion of retail marijuana outside the regulated distribution system; possessing retail marijuana or retail marijuana product obtained from outside the regulated distribution system or from an unauthorized source; other violations of Colorado Department of Revenue Regulation R 1307. Violations in this category also include transferring the ownership of a licensed facility without prior approval from the Local Licensing Authority, its key personnel, managers, shareholders, or owners. Penalties for violations in this category may include license revocation suspension, non-renewal or denial, additional restrictions on the license, and/or a fine of up to \$10,000, or as otherwise permitted by state law. The Licensing Authority may consider mitigating and aggravating circumstances in determining the penalty or penalties for violations.
- (C) License Violations. This category of violation is more severe than a license infraction, but not as severe as a violation affecting public health and safety, and includes, but is not limited to violations of terms and conditions of a specific license, failure to provide timely records required by this Ordinance or by state law or regulations; and failure to pay County excise taxes when due. The range of penalties for this category of violation may include a written warning, a suspension of the license, revocation of the license, and/or a fine of up to \$5,000.
- (D) License Infractions. This category of violation is the least severe and includes, but is not limited to violations of land use code violations, building permit violations, or terms and conditions of a license not considered as either a License Violation Affecting Public Health and Safety or License Violation.
- (E) Mitigating and Aggravating Factors. The Local Licensing Authority may consider mitigating and aggravating circumstances when considering the imposition of a penalty for violations and infractions. These factors may include, but are not limited to:
1. Any prior violations or infractions that the Licensee has admitted to or was found to have committed.
 2. Actions taken by the Licensee to prevent the violation or infraction.
 3. Corrective actions taken by the Licensee in response to the current violation or infraction.
 4. Willfulness, deliberateness, or negligence of the Licensee in committing the violation or infraction
 5. Any other factors pertinent to the violation or infraction, including any state-imposed penalty or determination of penalty for the violation or infraction.
- (F) The Local Licensing Authority may defer any enforcement action to the State of Colorado Department of Revenue.
- (G) Enforcement actions undertaken by the County shall be initiated and prosecuted by the County Attorney and shall be heard by the Local Licensing Authority, or as otherwise provided at law for violation of county ordinances.

Section 30. No County Liability; Indemnification.

By accepting a license issued pursuant to this Ordinance, the licensee waives and releases the County, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages, or liabilities of any kind that result from the arrest or prosecution of retail marijuana facility or establishment owners, operators, employees, clients, or customers for a violation of state or federal laws, rules or regulations. All licensees, jointly and severally in the case of more than one, agree to indemnify, defend and hold harmless the County, its officers, elected officials, employees, attorney and agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including without limitations, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, claims of injury to water rights or interference with the ability to receive a federal grant, loan or other source of federal funds, or any other claim whatsoever arising out of or in any manner connected with the operation of the retail marijuana facility or establishment that is the subject of the license.

Section 31. No Waiver of Governmental Immunity.

In adopting this Ordinance, the Board of County Commissioners is relying on, and does not waive or intend to waive, by any provision of this Ordinance, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*, as amended from time to time, or any other limitations right, immunity, or protection otherwise available to the County, its officers or its employees.

Section 32. Other Laws Remain Applicable.

- (A) To the extent the State of Colorado has adopted or adopts in the future any additional or more stringent law or regulations governing the sale or distribution of retail marijuana products, the additional or more stringent law or regulations shall control the establishment or operation of any such facility or establishment in Ouray County. Compliance with any applicable state law or regulations shall be deemed an additional requirement for issuance or denial of any license under this Ordinance, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.
- (B) In the event that the State of Colorado prohibits the sale or other cultivation, production or distribution of marijuana, any license issued hereunder shall be deemed immediately revoked by operation of law, with no grounds for hearing, appeal or other redress on behalf of the licensee.
- (C) The issuance of any license pursuant to this Ordinance shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, production, distribution, or use of marijuana.
- (D) To the extent that any other court of competent jurisdiction or agency of the United States acts to enforce federal laws and regulations or otherwise determines that the issuance of a license, possession, distribution, cultivation, production, sale, distribution or use of marijuana in the State of Colorado is an illegal activity subject to enforcement, the Board of County Commissioners reserves the right to immediately repeal or amend this Ordinance, and/or to revoke or suspend as a matter of law any and all licenses issued pursuant to this Ordinance.

Section 33. Effective Date.

Pursuant to C.R.S. 30-15-405, this Ordinance shall be published in full following its initial introduction and reading and published by title only following final adoption by the Board of County Commissioners and shall be effective thirty (30) days following such publication by title only.

Section 34. Interpretation.

This Ordinance shall be so interpreted and construed as to effectuate its general purpose. Section headings of the Ordinance shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof.

Section 35. Certification.

The Ouray County Clerk and Recorder or her Deputy shall certify to the passage of this Ordinance and make not less than three copies of the adopted Ordinance available for inspection by the public during regular business hours.

INTRODUCED AND FIRST READING on and on such date ordered published in the *OURAY COUNTY PLAINDEALER*. Published on JUNE 21, 2018

**Board of County Commissioners
Ouray County, Colorado**

[Signature]
Don Batchelder, Chair

[Signature]
John E. Peters, Vice-Chair

[Signature]
Ben Tisdell, Commissioner Member

ADOPTED ON SECOND AND FINAL READING on July 24, 2018

**Board of County Commissioners
Ouray County, Colorado**

[Signature]
Don Batchelder, Chair

[Signature]
John E. Peters, Vice-Chair

-ABSENT-
Ben Tisdell, Commissioner Member

EFFECTIVE DATE August 25, 2018.

CERTIFICATION BY OURAY COUNTY CLERK AND RECORDER:

I, Michelle Nauer, Clerk and Recorder of Ouray County and Clerk to the Board of County Commissioners, do hereby attest and certify that this Ordinance was

INTRODUCED AND READ ON JUNE 19, 2018 AND CONTINUED TO JULY 10 & 24 AND READ AND ORDERED PUBLISHED AT SUCH REGULAR MEETING OF THE BOARD OF COUNTY COMMISSIONERS.

THE ORDINANCE WAS PUBLISHED IN FULL IN THE *OURAY COUNTY PLAINDEALER* ON JUNE 21, 2018 ALONG WITH A NOTICE OF PUBLIC HEARING.

ADOPTED AND APPROVED AT A PUBLIC HEARING OF THE BOARD OF COUNTY COMMISSIONERS ON JULY 24, 2018, AFTER THE SECOND AND FINAL READING OF THE ORDINANCE.

PUBLISHED AFTER ADOPTION IN THE *OURAY COUNTY PLAINDEALER* ON THE 20th DAY OF JULY, 2018.

[Signature]
Michelle Nauer, Clerk and County Recorder
By: Hannah Hollenbeck, Deputy Clerk of the Board

